

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS

3 SHERMAN DIVISION

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6 DANIEL CLATE ACKER

]

CASE NO. 4:06CV469

7 VS.

]

9 AM, JUNE 16, 2011

8 DIRECTOR OF TDCJ-CID

]

PLANO, TEXAS

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10
11 REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING

12
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19 THE HONORABLE RICHARD SCHELL, U.S. DISTRICT JUDGE, PRESIDING

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22
23
24 PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE,

25 TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

1 [COURT REPORTER'S NOTES 20110616, 9 AM, THURSDAY,
2 JUNE 16, 2011, PLANO, TEXAS, U.S. DISTRICT JUDGE RICHARD SCHELL
3 PRESIDING]

4 APPEARANCES:

5 FOR THE PETITIONER: A. RICHARD ELLIS
6 ATTORNEY AT LAW
7 75 MAGEE AVENUE
8 MILL VALLEY, CALIFORNIA 94941
9 415-389-6771

10 FOR THE RESPONDENT: TINA JOANN MIRANDA
11 LESLIE K. KUYKENDALL
12 ASSISTANT ATTORNEYS GENERAL
13 OFFICE OF THE ATTORNEY GENERAL
14 STATE OF TEXAS
15 POST OFFICE BOX 12548
16 AUSTIN, TEXAS 78711-2548
17 512-936-1400
18
19

09:13AM 20

09:19AM 21 THE COURT: THANK YOU. PLEASE BE SEATED.

09:19AM 22 FIRST OF ALL, GOOD MORNING TO EVERYONE.

09:19AM 23 MR. ELLIS: GOOD MORNING, YOUR HONOR.

09:19AM 24 MS. MIRANDA: GOOD MORNING.

09:19AM 25 THE COURT: THIS CASE IS STYLED "DANIEL CLATE ACKER

09:19AM 1 VERSUS RICK THALER, DIRECTOR OF THE TEXAS DEPARTMENT OF
09:20AM 2 CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,"
09:20AM 3 CAUSE NUMBER 4:06CV469.

09:20AM 4 I HAVE IN THE COURTROOM REPRESENTING MR. ACKER--
09:20AM 5 MR. ACKER IS IN THE COURTROOM, ALSO HIS LAWYER, RICHARD ELLIS,
09:20AM 6 IS PRESENT. GOOD MORNING.

09:20AM 7 MR. ELLIS: GOOD MORNING, YOUR HONOR.

09:20AM 8 THE COURT: AND I ALSO HAVE IN THE COURTROOM TINA
09:20AM 9 MIRANDA, WHO IS AN ASSISTANT ATTORNEY GENERAL FOR THE STATE
09:20AM 10 OF TEXAS. GOOD MORNING.

09:20AM 11 MS. MIRANDA: YES, YOUR HONOR. AND ALSO LESLIE
09:20AM 12 KUYKENDALL WILL BE HERE.

09:20AM 13 THE COURT: ALL RIGHT.

09:20AM 14 THE COURT GRANTED, IN PART, THE PETITIONER'S MOTION
09:20AM 15 FOR AN EVIDENTIARY HEARING IN THIS CASE. THAT WAS DONE, LET'S
09:20AM 16 SEE, ON MAY 25TH OF 2010. I THINK THIS HEARING WAS SCHEDULED
09:20AM 17 ON AN EARLIER DATE AND WAS CONTINUED AT LEAST ONCE, MAYBE
09:21AM 18 TWICE, I'M NOT SURE, AT THE REQUEST OF THE PARTIES. AND SO
09:21AM 19 IT WAS RESCHEDULED FOR TODAY.

09:21AM 20 THE COURT GRANTED THE PETITIONER'S MOTION FOR AN
09:21AM 21 EVIDENTIARY HEARING ON HIS ACTUAL-INNOCENCE CLAIM, WHICH IS
09:21AM 22 CLAIM NUMBER 1. AND SO THAT'S WHAT WE ARE HERE FOR.

09:21AM 23 I HAVE READ THE JOINT PRE-HEARING STATEMENT, WHICH
09:21AM 24 IS DOCUMENT NUMBER 67. I SEE THAT THERE ARE 18 WITNESSES IN
09:21AM 25 THE STATEMENT. I DID RECEIVE WORD--I THINK, MR. ELLIS, YOU

09:21AM 1 CALLED MY OFFICE THIS MORNING AND SAID THAT DR. LARKIN, YOUR
09:22AM 2 EXPERT, WAS TAKEN TO THE HOSPITAL, APPARENTLY, LAST NIGHT.

09:22AM 3 MR. ELLIS: YES, THAT'S CORRECT, YOUR HONOR. I
09:22AM 4 WAS INFORMED THIS MORNING THAT THERE WAS A MEDICAL EMERGENCY.
09:22AM 5 DR. LARKIN HAD--

09:22AM 6 THE COURT: CAN YOU KEEP YOUR VOICE UP?

09:22AM 7 MR. ELLIS: I'M SORRY. CAN YOU HEAR ME NOW?

09:22AM 8 THE COURT: WELL, TRY TO PLACE THE MICROPHONE A
09:22AM 9 LITTLE CLOSER TO YOUR MOUTH AND KEEP YOUR VOICE UP. MR. KELLEY
09:22AM 10 RELIES ON EARPHONES THROUGH THE SOUND SYSTEM TO MAKE OUR
09:22AM 11 RECORD.

09:22AM 12 MR. ELLIS: YES, I WAS INFORMED THIS MORNING THAT
09:22AM 13 DR. LARKIN HAD WHAT WAS DESCRIBED AS THE CLASSIC SIGNS OF A
09:22AM 14 HEART ATTACK. HE IS IN AN ASSISTED-LIVING HOME BECAUSE OF
09:22AM 15 HIS MEDICAL CONDITION, INCLUDING LOSS OF A LEG AND PRIOR HEART
09:22AM 16 ATTACKS. I WAS INFORMED THAT AN AMBULANCE HAD BEEN CALLED
09:22AM 17 AND HE WAS ON HIS WAY TO THE MEDICAL CENTER IN CHARLOTTE,
09:23AM 18 NORTH CAROLINA. I HAVE, THROUGHOUT THE MORNING, BEEN TRYING
09:23AM 19 TO OBTAIN UPDATED INFORMATION ON HIS CONDITION, WHICH APPEARS
09:23AM 20 TO BE RATHER SERIOUS.

09:23AM 21 I HAVE BEEN NOTIFIED BY THE I.T. PEOPLE, BOTH HERE
09:23AM 22 AND IN CHARLOTTE, THAT TOMORROW IS AVAILABLE. THE COURT HAS
09:23AM 23 MADE TOMORROW AVAILABLE FOR THE HEARING TOO. I'M TRYING TO
09:23AM 24 FIND OUT IF DR. LARKIN'S CONDITION WOULD ENABLE HIM TO TESTIFY
09:23AM 25 TOMORROW.

09:23AM 1 AND THAT'S THE PRESENT STATE OF WHAT I KNOW ABOUT
09:23AM 2 DR. LARKIN, YOUR HONOR.

09:23AM 3 THE COURT: OKAY.

09:23AM 4 MR. ELLIS: SO WE ARE SORRY. WE APOLOGIZE FOR THIS.
09:23AM 5 IT WAS AN ENTIRELY, OF COURSE, UNFORESEEN EVENT.

09:23AM 6 THE COURT: YES.

09:23AM 7 MR. ELLIS: HE HAD SERIOUS CHEST PAINS AND IT WAS
09:23AM 8 APPARENTLY THE CLASSIC SIGNS OF A HEART ATTACK.

09:23AM 9 THE COURT: OKAY.

09:23AM 10 FOR THE RECORD, THE COURT HAD ARRANGED
09:23AM 11 VIDEOCONFERENCING FOR DR. LARKIN'S TESTIMONY FROM NORTH
09:23AM 12 CAROLINA, AND SO THAT'S THE REASON HE'S STILL IN NORTH
09:24AM 13 CAROLINA. BUT, OF COURSE, THE EMERGENCY THAT OCCURRED WAS
09:24AM 14 TOTALLY UNFORESEEN.

09:24AM 15 WELL, THE BURDEN OF PROOF IS ON THE PETITIONER HERE.
09:24AM 16 SO HOW WOULD YOU LIKE TO PROCEED, MR. ELLIS? DO YOU WANT TO
09:24AM 17 START CALLING OTHER WITNESSES? OR DO YOU HAVE ANY OTHER
09:24AM 18 WITNESSES HERE?

09:24AM 19 MR. ELLIS: YOUR HONOR, YES, WE DO HAVE ONE WITNESS
09:24AM 20 THIS MORNING. PERHAPS IT MIGHT BE USEFUL TO THE COURT IF I
09:24AM 21 COULD PROVIDE A SHORT ROAD MAP, PERHAPS, OF THE PRESENTATION--

09:24AM 22 THE COURT: THAT WOULD BE FINE.

09:24AM 23 MR. ELLIS: --THAT WE ENVISION--

09:24AM 24 THE COURT: OKAY.

09:24AM 25 MR. ELLIS: --BECAUSE COUNSEL FOR THE RESPONDENT AND

09:24AM 1 I HAVE BEEN ABLE TO WORK--ENTERED INTO SOME STIPULATIONS--

09:24AM 2 THE COURT: OKAY.

09:24AM 3 MR. ELLIS: --REGARDING SOME OF THE--

09:24AM 4 THE COURT: COULD YOU DO THAT FROM THE PODIUM.

09:24AM 5 MR. ELLIS: YES, I WILL.

09:24AM 6 THE COURT: THAT WILL GET YOU OUT OF THE LIGHT OF
09:24AM 7 THE DOCUMENT CAMERA TOO. OR THE PROJECTOR, RATHER.

09:25AM 8 MR. ELLIS: BASICALLY, WE HAVE BEEN ABLE TO--OR AT
09:25AM 9 LEAST I THINK WE WILL BE ABLE TO STIPULATE TO THE FOLLOWING
09:25AM 10 WITNESSES:

09:25AM 11 THE FIRST ONE WOULD BE MR. CLAYTON MCGRAW,
09:25AM 12 M-C-G-R-A-W, WHO WAS THE GRAND JURY FOREMAN. AND I BELIEVE
09:25AM 13 THERE WILL BE A STIPULATION AS TO HIS TESTIMONY.

09:25AM 14 THE SECOND WITNESS THAT WE WILL NOT BE CALLING
09:25AM 15 IS WILLIAM BRANDON, B-R-A-N-D-O-N, ANDERSON FROM THE HOPKINS
09:25AM 16 COUNTY SHERIFF'S DEPARTMENT. AND I BELIEVE THERE WILL BE
09:25AM 17 A STIPULATION ABOUT A PRIOR JUMPING ATTEMPT BY THE VICTIM,
09:25AM 18 MS. GEORGE, FROM THE TRUCK WHEN MR. ACKER WAS IN IT.

09:25AM 19 THE THIRD WITNESS WHICH WE HOPE TO ENTER INTO A
09:26AM 20 STIPULATION TO IS WALTER ALLEN STORY, S-T-O-R-Y, ALSO FROM THE
09:26AM 21 HOPKINS COUNTY SHERIFF'S DEPARTMENT. AND THIS IS REGARDING
09:26AM 22 PHONE CALLS REGARDING THE ABDUCTION OF THE VICTIM AND THE
09:26AM 23 TIMING OF THOSE CALLS.

09:26AM 24 THERE IS A QUESTION HERE--I THINK--COUNSEL MAY
09:26AM 25 CORRECT ME, BUT I BELIEVE WE MAY HAVE A STIPULATION AS TO BILL

09:26AM 1 REECE--R-E-C-E-E, I THINK--R-E-C-E-S-E--I'M NOT SURE OF THE
09:26AM 2 SPELLING OF THAT NAME--ALSO FROM THE HOPKINS COUNTY SHERIFF'S
09:26AM 3 DEPARTMENT.

09:26AM 4 THE COURT: IS HE LISTED IN YOUR PRE-HEARING
09:26AM 5 STATEMENT?

09:26AM 6 MR. ELLIS: I BELIEVE HE IS, YOUR HONOR, YES.

09:26AM 7 THE COURT: LET'S SEE HERE. ALL RIGHT. R-E-E-C-E.

09:26AM 8 MR. ELLIS: R-E-E-C-E.

09:27AM 9 THE COURT: ALL RIGHT. GO AHEAD.

09:27AM 10 MR. ELLIS: AND HE HAD INTERVIEWED MR. ACKER AFTER
09:27AM 11 HE TURNED HIMSELF IN TO MR. REECE.

09:27AM 12 ADDITIONALLY, THE PETITIONER WILL NOT BE CALLING THE
09:27AM 13 FOLLOWING INDIVIDUALS WHO ARE ON OUR WITNESS LIST:

09:27AM 14 THE FIRST ONE WOULD BE WILLIAM HOWARD MCDOWELL,
09:27AM 15 M-C-D-O-W-E-L-L, WHO WAS ONE OF PETITIONER'S TRIAL COUNSEL.
09:27AM 16 HIS TESTIMONY WOULD BE BASICALLY RECORD BASED OR COVERED BY
09:27AM 17 THE OTHER TRIAL COUNSEL, MR. RON FERGUSON, WHO WILL BE HERE
09:27AM 18 THIS AFTERNOON.

09:27AM 19 AND THE FOLLOWING WITNESSES WILL NOT BE CALLED, AS
09:27AM 20 THEIR TESTIMONY WOULD BE ENTIRELY RECORD BASED. THEY WOULD BE
09:27AM 21 DORCAS VITTATOE, V-I-T-T-A-T-O-E. MS. VITTATOE IS PETITIONER'S
09:28AM 22 SISTER, AND SHE TESTIFIED AT TRIAL.

09:28AM 23 THE NEXT ONE WOULD BE PETITIONER DANIEL ACKER. HE
09:28AM 24 TESTIFIED AT TRIAL.

09:28AM 25 AND ALSO SHERRI WALKER, PETITIONER'S YOUNGER SISTER.

09:28AM 1 WE DON'T FEEL HER TESTIMONY WOULD BE RELEVANT. SHE WAS NOT
09:28AM 2 LIVING IN THE AREA AT THE TIME OF THE--OF THE OFFENSE.

09:28AM 3 THE COURT: OKAY. THAT REMOVES EIGHT WITNESSES FROM
09:28AM 4 THE 18. SO WE HAVE 10 WITNESSES, INCLUDING DR. LARKIN. LET ME
09:28AM 5 ASK YOU, SINCE BOTH OF YOUR EXPERTS--

09:28AM 6 OKAY, MS. MIRANDA.

09:28AM 7 MS. MIRANDA: I WANTED TO, IF I COULD, YOUR HONOR,
09:28AM 8 JUST CLEAR UP SOME OF THE STIPULATIONS.

09:28AM 9 THE COURT: ALL RIGHT.

09:28AM 10 MS. MIRANDA: DO YOU NEED ME TO GO TO THE PODIUM?

09:28AM 11 THE COURT: THAT'S OKAY, YOU ARE USING YOUR MIKE.

09:29AM 12 MS. MIRANDA: AS FAR AS STIPULATING TO THE WITNESSES
09:29AM 13 WHO TESTIFIED TO THE PREVIOUS ATTEMPT TO JUMP, WE ARE NOT
09:29AM 14 STIPULATING TO THE FACT THAT THAT EVENT ACTUALLY HAPPENED.
09:29AM 15 WHAT WE ARE STIPULATING IS THAT THAT'S WHAT THEY WOULD HAVE
09:29AM 16 TESTIFIED TO. AND IT WOULD BE HEARSAY TESTIMONY. BUT UNDER
09:29AM 17 HOUSE, WE UNDERSTAND THAT KIND OF TESTIMONY IS ADMISSIBLE FOR
09:29AM 18 ACTUAL-INNOCENCE PURPOSES. BUT WE DO WANT TO MAKE SURE THAT
09:29AM 19 IT'S CLEAR THAT IS HEARSAY TESTIMONY. WE'RE NOT STIPULATING
09:29AM 20 TO THE TRUTH OF THE MATTER ASSERTED, WE'RE SIMPLY STIPULATING
09:29AM 21 THAT THAT'S WHAT THEY WOULD HAVE TESTIFIED TO.

09:29AM 22 THE COURT: OKAY. ALL RIGHT.

09:29AM 23 MS. MIRANDA: THANK YOU, YOUR HONOR.

09:29AM 24 THE COURT: OKAY.

09:29AM 25 LET ME ASK YOU, SINCE BOTH OF YOUR EXPERTS APPEAR TO

09:29AM 1 AGREE THAT--WAIT A MINUTE.

09:29AM 2 LADIES AND GENTLEMEN, SOMEBODY HAS A CHILD. I DON'T
09:29AM 3 KNOW WHERE THE CHILD IS. SHE'S GOING TO HAVE TO CALM DOWN
09:30AM 4 BEFORE SHE COMES BACK IN.

09:30AM 5 ALL RIGHT. SINCE BOTH OF YOUR EXPERTS SEEM TO AGREE
09:30AM 6 THAT THERE WAS NO STRANGULATION--THAT STRANGULATION WAS NOT
09:30AM 7 THE CAUSE OF DEATH--IS THAT TRUE, MS. MIRANDA?

09:30AM 8 MS. MIRANDA: YES, YOUR HONOR, IT IS.

09:30AM 9 THE COURT: OKAY. NOW, AT THE TRIAL, THE STATE'S
09:30AM 10 EXPERT TESTIFIED THAT STRANGULATION WAS THE CAUSE OF THE DEATH
09:30AM 11 OF THE DECEASED. CORRECT?

09:30AM 12 MS. MIRANDA: IT WAS ONE OF THE CAUSES, YES, THAT
09:30AM 13 SHE IDENTIFIED. SHE IDENTIFIED STRANGULATION AND BLUNT-FORCE
09:30AM 14 INJURY.

09:30AM 15 THE COURT: OKAY. ALL RIGHT. OKAY. SO WHAT WILL
09:30AM 16 DR. LARKIN AND DR. DI MAIO ADD TO THIS HEARING IF THEY BOTH
09:30AM 17 AGREE THAT STRANGULATION WAS NOT THE CAUSE OF DEATH? AS I SEE
09:30AM 18 YOUR SUMMARY OF DR. LARKIN'S TESTIMONY, HE WOULD TESTIFY AS TO
09:31AM 19 THE ERRORS OF THE AUTOPSY. HE DISAGREED WITH DR. GONSOULIN,
09:31AM 20 WHO APPARENTLY WAS THE CORONER WHO DID THE AUTOPSY AND
09:31AM 21 TESTIFIED AT TRIAL. SO THAT'S WHAT HE WOULD TESTIFY TO. I'M
09:31AM 22 NOT SURE THAT WE'LL NEED HIM. MAYBE YOU FEEL DIFFERENTLY,
09:31AM 23 MR. ELLIS. BUT IF THAT'S THE EXTENT OF HIS TESTIMONY, AND THE
09:31AM 24 STATE AGREES THAT STRANGULATION WAS NOT ONE OF THE CAUSES OF
09:31AM 25 DEATH, THEN I DON'T KNOW IF YOU NEED TO MAKE ARRANGEMENTS FOR

09:31AM 1 HIM TO TESTIFY OR NOT.

09:31AM 2 MR. ELLIS: WELL, I WOULD AGREE, YOUR HONOR. THE
09:31AM 3 STATE HAS A RIGHT TO CROSS-EXAMINE HIM. BUT I WOULD AGREE HIS
09:31AM 4 TESTIMONY WILL BE--AS FAR AS I'M CONCERNED--BASICALLY RECORD
09:31AM 5 BASED IN THE SENSE THAT HIS REPORT IS AN EXHIBIT TO THE FEDERAL
09:31AM 6 WRIT, AND WE WON'T BE GOING BEYOND, I THINK, WHAT HE'S ALREADY
09:31AM 7 SAID. SO I WOULD AGREE WITH THE COURT.

09:32AM 8 MS. MIRANDA: I WOULD HAVE TO DISAGREE WITH THE
09:32AM 9 COURT, YOUR HONOR. THE INDICTMENT IN THIS CASE ALLEGED THREE
09:32AM 10 ALTERNATIVES. STRANGULATION WAS PART OF TWO OF THEM. THE
09:32AM 11 THIRD ALTERNATIVE WAS THAT MR. ACKER CAUSED HER DEATH BY BLUNT-
09:32AM 12 FORCE INJURIES. AND I THINK BOTH EXPERTS AGREE THAT SHE
09:32AM 13 SUFFERED BLUNT-FORCE INJURIES. SO THEN THE QUESTION BECOMES:
09:32AM 14 WAS THAT THE CAUSE OF DEATH?

09:32AM 15 AND MR. LARKIN, IN HIS REPORT, OPINED THAT HER DEATH
09:32AM 16 WAS ACCIDENTAL, THAT THESE BLUNT-FORCE INJURIES WERE THE RESULT
09:32AM 17 OF HER BEING PUSHED--I'M SORRY, I APOLOGIZE--THAT THESE
09:32AM 18 INJURIES WERE THE RESULT OF HER VOLUNTARILY JUMPING OUT OF THE
09:32AM 19 TRUCK.

09:32AM 20 THE COURT: WHO TESTIFIED TO THAT?

09:32AM 21 MS. MIRANDA: THIS IS DR. LARKIN, IN HIS REPORT.

09:32AM 22 THE COURT: OKAY. HOW WOULD HE KNOW WHETHER SHE
09:32AM 23 VOLUNTARILY JUMPED OUT OR SHE WAS PUSHED?

09:32AM 24 MS. MIRANDA: WELL, YOUR HONOR, THAT'S OUR QUESTION.
09:32AM 25 AND THAT'S WHY I WANT TO CROSS-EXAMINE HIM. BECAUSE HE OPINED

09:32AM 1 TO A CERTAIN DEGREE OF MEDICAL CERTAINTY THAT HER DEATH WAS
09:32AM 2 ACCIDENTAL AND THAT IT WAS AS A RESULT OF HER VOLUNTARILY
09:32AM 3 JUMPING OUT OF THE TRUCK. WE WOULD LIKE TO CROSS-EXAMINE HIM
09:33AM 4 AS TO HOW HE CAN TELL THAT.

09:33AM 5 THE COURT: OKAY. ALL RIGHT.

09:33AM 6 AND THEN DR. DI MAIO IS EXPECTED TO TESTIFY THAT--
09:33AM 7 WELL, IS EXPECTED TO SAY, ON BEHALF OF THE STATE, THE SAME
09:33AM 8 THING AS DR. LARKIN WOULD SAY AS FAR AS STRANGULATION, THAT
09:33AM 9 MANUAL STRANGULATION IS NOT A VIABLE THEORY HERE; ANY INJURIES
09:33AM 10 ARE CONSISTENT WITH EXITING THE TRUCK.

09:33AM 11 DO THEY BOTH AGREE EXITING THE TRUCK WHILE IT'S
09:33AM 12 MOVING? IS THAT AGREED TO BY BOTH EXPERTS?

09:33AM 13 MR. ELLIS: YES, YOUR HONOR.

09:33AM 14 MS. MIRANDA: I BELIEVE--WELL, I DON'T KNOW THAT FOR
09:33AM 15 SURE. I'M NOT SURE IF DR. DI MAIO'S OPINION WAS BASED ON THE
09:33AM 16 FACT THAT THE TRUCK WAS ACTUALLY MOVING, BECAUSE HE ALSO OPINED
09:33AM 17 THAT SHE CERTAINLY COULD HAVE BEEN RUN OVER WHEN THE TRUCK WAS
09:33AM 18 NOT MOVING [SIC]. SO I THINK EITHER POSSIBILITY EXISTS. SO I
09:34AM 19 WOULD HATE TO STIPULATE TO THAT.

09:34AM 20 THE COURT: OKAY.

09:34AM 21 MS. MIRANDA: BECAUSE THERE WAS A WITNESS IN THIS
09:34AM 22 CASE, YOUR HONOR, THAT SAW MR. ACKER--THIS IS IN THE RECORD
09:34AM 23 FROM THE TRIAL--THAT SAW HIM DRAGGING WHAT APPEARED TO BE HER
09:34AM 24 UNCONSCIOUS BODY OUT OF THE TRUCK. SO IT IS POSSIBLE--

09:34AM 25 THE COURT: BUT DR. DI MAIO IS OF THE OPINION THAT

09:34AM 1 YOU CAN'T TELL WHETHER SHE WAS PUSHED OR WHETHER SHE JUMPED?

09:34AM 2 MS. MIRANDA: EXACTLY, YES. AND HE'S ALSO GOING
09:34AM 3 TO TESTIFY TO THE FACT THAT IT'S HIS OPINION THAT SHE WAS RUN
09:34AM 4 OVER. AND I BELIEVE MR. LARKIN, IN HIS REPORT, STATES THAT HE
09:34AM 5 DOES NOT BELIEVE THAT SHE WAS RUN OVER BY THE TRUCK. THAT WILL
09:34AM 6 BE ANOTHER AREA OF CROSS-EXAMINATION.

09:34AM 7 THE COURT: OKAY. ALL RIGHT.

09:34AM 8 MR. ELLIS: YOUR HONOR, IT APPEARS THAT A LOT OF
09:34AM 9 THESE ARGUMENTS MAY BE HYBRID LEGAL ARGUMENTS THAT PERHAPS
09:34AM 10 MIGHT BE BEST ADDRESSED IN A POST-HEARING BRIEF, IF THE COURT
09:34AM 11 IS INCLINED TO AFFORD US THAT OPPORTUNITY, FOR THIS REASON:
09:35AM 12 A LOT OF--I DON'T SEE THE NEED HERE TO REHASH A LOT OF WHAT'S
09:35AM 13 ALREADY IN THE RECORD. AND IF THE ARGUMENT IS THE LEGAL
09:35AM 14 CONSEQUENCES OF THIS OR WHAT THIS MEANS, I THINK THAT WE
09:35AM 15 BOTH--BOTH COUNSEL, I THINK, AGREE, I THINK, THAT A POST-
09:35AM 16 HEARING BRIEF WOULD BE AN OPPORTUNE TIME--OR IT WOULD BE GOOD
09:35AM 17 TO PUT THESE ARGUMENTS IN A POST-HEARING BRIEF. IN OTHER WORDS,
09:35AM 18 THAT WOULD GIVE US A CHANCE TO SUMMARIZE WHAT WAS THE SUBSTANCE
09:35AM 19 OF THE TESTIMONY AND THEN TO MAKE OUR LEGAL ARGUMENTS, AT LEAST,
09:35AM 20 IN A POST-HEARING BRIEF.

09:35AM 21 THE COURT: OKAY. NOW, AS I UNDERSTAND IT FROM
09:35AM 22 THE HOUSE CASE, I CAN HEAR ANY EVIDENCE WHETHER IT'S ADMISSIBLE
09:35AM 23 OR NOT AT TRIAL. SO WHETHER I AGREE OR DISAGREE WITH THE TRIAL
09:35AM 24 JUDGE'S RULINGS ON THE EVIDENCE IS SORT OF IRRELEVANT HERE.
09:36AM 25 I'M JUST GOING TO HEAR WHATEVER YOU PRESENT TO ME; AND IF IT'S

09:36AM 1 RELEVANT TO THE ISSUE OF ACTUAL INNOCENCE, THEN I CAN CONSIDER
09:36AM 2 THAT.

09:36AM 3 MR. ELLIS: YES, YOUR HONOR. SCHLUP VERSUS DELLO,
09:36AM 4 513 U.S. 298--SCHLUP, S-C-H-L-U-P, VERSUS DELLO, D-E-L-L-O,
09:36AM 5 CITED AT 513 U.S. 298, 1995, ALSO SAYS THAT ALL EVIDENCE CAN
09:36AM 6 BE CONSIDERED, EVEN EVIDENCE THAT WAS NOT ADMISSIBLE AT TRIAL
09:36AM 7 OR THAT WAS EXCLUDED AT TRIAL OR THAT WAS UNAVAILABLE AT TRIAL.

09:36AM 8 HOUSE--THE COURT IS ALSO CORRECT. HOUSE VERSUS
09:36AM 9 BELL, 547 U.S. 518, 2006 CASE, SAYS THE SAME THING, THAT THE
09:36AM 10 COURT CAN CONSIDER ALL THE EVIDENCE, EVEN THOUGH IT MAY NOT
09:36AM 11 HAVE BEEN ADMISSIBLE AT TRIAL, SUCH AS HEARSAY.

09:36AM 12 MS. MIRANDA: AND, YOUR HONOR, IF I MAY JUST COMMENT
09:36AM 13 ON THAT, I ABSOLUTELY AGREE THAT THAT'S WHAT THE CASE LAW SAYS
09:37AM 14 AND THE SUPREME COURT HAS SAID, BUT I THINK WITH THE CAVEAT
09:37AM 15 THAT, WHEN YOU ARE CONSIDERING THAT EVIDENCE, TO CONSIDER
09:37AM 16 WHY A PARTICULAR PIECE OF EVIDENCE MIGHT NOT BE ADMISSIBLE,
09:37AM 17 ESPECIALLY IF THE REASON FOR THE INADMISSIBILITY AT TRIAL WOULD
09:37AM 18 HAVE BEEN RELIABILITY, THAT WHEN CONSIDERING THAT EVIDENCE, YOU
09:37AM 19 CAN CERTAINLY CONSIDER THE FACT THAT--THE RELIABILITY ASPECT OF
09:37AM 20 THAT. FOR INSTANCE, HEARSAY TESTIMONY.

09:37AM 21 THE COURT: YEAH. IT JUST SEEMS ODD TO ME THAT THIS
09:37AM 22 COURT CAN CONSIDER ALL THE EVIDENCE, WHETHER IT'S ADMISSIBLE OR
09:37AM 23 NOT, IN DETERMINING WHETHER NO REASONABLE JUROR COULD HAVE DONE
09:37AM 24 ANYTHING BUT FIND A REASONABLE DOUBT.

09:37AM 25 MS. MIRANDA: WELL, CERTAINLY THE STATE WOULD AGREE

09:37AM 1 WITH YOU, YOUR HONOR; BUT, UNFORTUNATELY, THE SUPREME COURT, I
09:37AM 2 THINK, HAS BEEN PRETTY CLEAR ABOUT THE FACT THAT YOU CAN DO IT.
09:37AM 3 SO IT IS TOUGH, BECAUSE A JURY WOULD NOT, IN FACT, HAVE HEARD A
09:37AM 4 GREAT PORTION OF--

09:37AM 5 THE COURT: AND IN ANY TRIAL MIGHT NOT BE ABLE TO
09:38AM 6 HEAR THAT BECAUSE IT'S NOT ADMISSIBLE.

09:38AM 7 MS. MIRANDA: EXACTLY.

09:38AM 8 THE COURT: OKAY. SO, ASSUMING THAT THE COURT CAN
09:38AM 9 HEAR EVERYTHING, THEN, IS THE COURT ALSO CONFINED TO THE THEORY
09:38AM 10 THAT THE PROSECUTION ADVANCED AT THE TRIAL?

09:38AM 11 MS. MIRANDA: YOUR HONOR, ABSOLUTELY NOT.

09:38AM 12 THE COURT: IN OTHER WORDS, THE PROSECUTION ADVANCED
09:38AM 13 EITHER STRANGULATION, BLUNT FORCE, OR BOTH.

09:38AM 14 MS. MIRANDA: CORRECT.

09:38AM 15 THE COURT: RIGHT? OKAY. AND WAS IT THE
09:38AM 16 PROSECUTION'S THEORY AT TRIAL THAT MR. ACKER PUSHED
09:38AM 17 MS. GEORGE FROM THE TRUCK?

09:38AM 18 MS. MIRANDA: I'M SORRY. YOUR QUESTION WAS?

09:38AM 19 THE COURT: WAS THE THEORY AT TRIAL AND WAS THE JURY
09:38AM 20 INSTRUCTED THAT THEY COULD ONLY FIND HIM GUILTY IF THEY FOUND
09:39AM 21 THAT EITHER HE STRANGLED HER OR HE CAUSED HER TO MAKE CONTACT
09:39AM 22 WITH A BLUNT OBJECT THAT KILLED HER AS A RESULT OF HIM PUSHING
09:39AM 23 HER FROM THE TRUCK?

09:39AM 24 MS. MIRANDA: NO, YOUR HONOR, THAT WAS NOT--THE
09:39AM 25 SPECIFIC PUSHING HER FROM THE TRUCK WAS NOT PART OF THAT.

09:39AM 1 THEY WERE INSTRUCTED MORE GENERALLY, WHICH IS SIMPLY THE BLUNT-
09:39AM 2 FORCE INJURY, IF HE CAUSED--

09:39AM 3 THE COURT: IF HE CAUSED. JUST CAUSED?

09:39AM 4 MS. MIRANDA: YES.

09:39AM 5 THE COURT: OKAY.

09:39AM 6 MS. MIRANDA: AND IF I MAY ADDRESS THE FIRST PART
09:39AM 7 OF THAT QUESTION, YOUR HONOR, WE DO NOT BELIEVE THAT YOU ARE
09:39AM 8 CONFINED BY THE STATE'S THEORY SIMPLY BECAUSE THE INQUIRY INTO
09:39AM 9 ACTUAL INNOCENCE, ESPECIALLY IN THIS CONTEXT OF THE GATEWAY,
09:39AM 10 IS SEPARATE FROM--IT'S NOT A TRIAL ERROR. THIS ISN'T AN
09:39AM 11 INEFFECTIVE ASSISTANCE OF COUNSEL, WHERE YOU REALLY ARE TRYING
09:39AM 12 TO DETERMINE THE EFFECT IT WOULD HAVE HAD ON THE JURY. THIS IS
09:39AM 13 SORT OF A SEPARATE INQUIRY. THIS IS: DID HE DO THIS AT ALL?
09:39AM 14 AND IF HE DIDN'T, THEN MAYBE WE COULD USE THIS OTHER GATEWAY TO
09:39AM 15 GET TO SOME PROCEDURALLY BARRED CLAIM.

09:39AM 16 SO I DON'T BELIEVE THE COURT IS CONFINED TO THE
09:40AM 17 THEORIES THAT WERE ASSERTED BY THE STATE AT TRIAL. I THINK YOU
09:40AM 18 LOOK AT THIS EVIDENCE, NEW AND OLD, AND SEE WHERE IT COMES OUT.

09:40AM 19 MR. ELLIS: YOUR HONOR, IF I MAY, WE VIGOROUSLY
09:40AM 20 DISPUTE COUNSEL'S ACCOUNT OF WHAT THE TRIAL WAS--

09:40AM 21 THE COURT: YOU NEED TO KEEP YOUR VOICE UP. I'M
09:40AM 22 AFRAID THE COURT REPORTER IS GOING TO HAVE A LOT OF TROUBLE
09:40AM 23 HEARING YOU.

09:40AM 24 MR. ELLIS: AM I COMING IN BETTER NOW?

09:40AM 25 THE COURT: YOU ARE NOW, UH-HUH.

09:40AM 1 MR. ELLIS: THERE WAS NO STAND-ALONE THEORY OF
09:40AM 2 BLUNT-FORCE INJURY HERE. BASICALLY, THE JURY WAS ASKED TO
09:40AM 3 CONSIDER BLUNT-FORCE INJURIES, BUT IN THE CONTEXT OF THE THEORY
09:40AM 4 OF A PRIOR STRANGULATION. I THINK THAT THE KEY--AND AGAIN HERE
09:40AM 5 WE'RE GOING--

09:40AM 6 THE COURT: WAIT A MINUTE, WAIT A MINUTE. IN YOUR
09:40AM 7 PRE-HEARING STATEMENT--LET ME SEE WHERE THAT IS--DO YOU NOT
09:40AM 8 OUTLINE--WELL, MAYBE YOU DO NOT. LET'S SEE. NO, I DON'T
09:40AM 9 THINK SO. I THINK YOU GET RIGHT INTO WHO THE WITNESSES ARE.

09:41AM 10 WELL, IT WAS MY UNDERSTANDING THAT THERE WERE--LET'S
09:41AM 11 SEE--THERE WERE THREE THEORIES: STRANGULATION, IMPACT WITH A
09:41AM 12 BLUNT OBJECT, OR BOTH. YOU DISPUTE THAT?

09:41AM 13 MR. ELLIS: YES, WE DO, YOUR HONOR, BECAUSE WE
09:41AM 14 CANNOT SIMPLY EXCISE THE OTHER TWO. WE CANNOT SIMPLY TAKE
09:41AM 15 STRANGULATION OFF THE TABLE AND THEN SAY: WHAT WOULD A
09:41AM 16 REASONABLE JUROR DO LEFT WITH BLUNT-FORCE INJURIES? FOR THIS
09:41AM 17 REASON: WE CAN'T ASK THEM--WE CAN'T PUT--THE COURT COULD NOT
09:41AM 18 PUT ITSELF IN THE MIND OF A REASONABLE JUROR BY DOING THIS,
09:41AM 19 BECAUSE THAT WAS NOT THE CONTEXT IN WHICH THE JURY CHARGE WAS
09:41AM 20 MADE. THE JURY CHARGE WAS MADE IN THE CONTEXT OF THE MOUNDS
09:42AM 21 OF EVIDENCE, FROM THE AUTOPSY, TO THE INDICTMENT, TO THE
09:42AM 22 TESTIMONY OF DR. GONSOULIN, THE OPENING STATEMENTS, THE
09:42AM 23 TESTIMONY, THE CROSS-EXAMINATION OF MR. ACKER, THE CLOSING
09:42AM 24 ARGUMENTS. THEY WERE ALL WITHIN THE CONTEXT OF THE VICTIM WAS
09:42AM 25 FIRST STRANGLED AND THEN DEAD AT THE TIME OF THE BLUNT-FORCE

09:42AM 1 INJURY. SO THIS IS WHY WE DON'T EVEN KNOW IF THE JURY EVER
09:42AM 2 GOT TO THE THEORY OF BLUNT-FORCE INJURIES ALONE BEING WHAT THEY
09:42AM 3 CONSIDERED. THEY COULD HAVE CONSIDERED THE STRANGULATION. AND
09:42AM 4 THEY WERE GIVEN MASSIVE EVIDENCE THROUGHOUT THE TRIAL OF THE
09:42AM 5 VICTIM BEING DEAD WHEN THE BLUNT-FORCE INJURIES OCCURRED. AND
09:42AM 6 THAT'S WHY I SAY THAT THE--WE CANNOT SIMPLY TAKE STRANGULATION
09:42AM 7 OFF THE THEORY WITHOUT IT IMPACTING THE ENTIRE JURY CHARGE THAT
09:42AM 8 THE JURY WAS--

09:42AM 9 THE COURT: WELL, BUT WOULDN'T I LOOK AT THE JURY
09:42AM 10 CHARGE TO SEE HOW THEY WERE CHARGED?

09:42AM 11 MR. ELLIS: YES, YOUR HONOR, WE CAN LOOK AT THAT TO
09:43AM 12 SEE HOW THEY WERE CHARGED, BUT WE CAN'T SAY THAT, WELL, YOU
09:43AM 13 KNOW, IF THEY WERE--IF THEY ELIMINATE STRANGULATION--

09:43AM 14 THE COURT: WELL, FIRST OF ALL, I'M NOT LOOKING
09:43AM 15 NECESSARILY AT THAT JURY. THE TEST IS: BASED ON THE TOTAL
09:43AM 16 RECORD THAT I HEAR AT THIS HEARING, THE COURT MUST MAKE A
09:43AM 17 PROBABILISTIC DETERMINATION ABOUT WHAT REASONABLE, PROPERLY
09:43AM 18 INSTRUCTED JURORS WOULD DO.

09:43AM 19 NOW, PROPERLY INSTRUCTED--MAYBE I'M NOT EVEN LIMITED
09:43AM 20 BY THE INSTRUCTIONS THAT WERE GIVEN AT THAT TRIAL. DO BOTH OF
09:43AM 21 YOU THINK I AM?

09:43AM 22 MS. MIRANDA: I DON'T THINK YOU ARE. AND I THINK
09:43AM 23 THE KEY TO THIS IS EXACTLY WHAT YOU SAID, YOUR HONOR, AND THAT
09:43AM 24 IS IT'S NOT JUST THE JURY. WE ARE NOT TALKING ABOUT WHAT THIS
09:43AM 25 JURY WOULD HAVE DONE. THAT WOULD BE THE CASE IN AN

09:43AM 1 INEFFECTIVE-ASSISTANCE-OF-COUNSEL CLAIM OR SOME OTHER TRIAL
09:43AM 2 ERROR. WE ARE SIMPLY TALKING ABOUT WHAT A REASONABLE JURY OR
09:44AM 3 A REASONABLE JUROR WOULD SAY, GIVEN THE EVIDENCE AS A WHOLE.
09:44AM 4 SO IT DOESN'T MATTER WHAT THEORY THE STATE--OR THE CONTEXT
09:44AM 5 IN WHICH THE STATE PRESENTED ITS EVIDENCE AT TRIAL, BECAUSE
09:44AM 6 THAT'S NOT WHAT WE'RE TALKING ABOUT. WE'RE TALKING ABOUT:
09:44AM 7 KNOWING WHAT WE KNOW NOW, THE ACTUAL INCIDENT THAT IS SUPPOSED
09:44AM 8 TO BE ESTABLISHED BY NEW EVIDENCE, KNOWING WHAT WE KNOW NOW,
09:44AM 9 WHAT WOULD A REASONABLE JUROR DO?

09:44AM 10 AND I THINK--GOING BACK TO THE ADMISSIBILITY THING,
09:44AM 11 I THINK THAT IS EVIDENCE OF THE FACT THAT WE'RE NOT LIMITED TO
09:44AM 12 WHAT THAT JURY WOULD HEAR, BECAUSE THE JURY WOULD NEVER HEAR
09:44AM 13 THAT EVIDENCE. SO WE'RE, AGAIN, NOT TALKING ABOUT THE SAME
09:44AM 14 JURY THAT SAT IN HIS TRIAL, WE'RE TALKING ABOUT A HYPOTHETICAL
09:44AM 15 REASONABLE JUROR AND WHAT THEY WOULD THINK.

09:44AM 16 THE COURT: THAT'S MY UNDERSTANDING.

09:44AM 17 MS. MIRANDA: AND I WOULD ALSO LIKE TO POINT OUT
09:44AM 18 THAT IT IS IN THE JURY CHARGE THREE SEPARATE THINGS. AND NOT
09:44AM 19 ONLY THAT, THE PROSECUTOR DID ARGUE DURING CLOSING ARGUMENT
09:44AM 20 THAT IT COULD BE EITHER, IT COULD BE STRANGULATION, IT COULD
09:44AM 21 BE A SEPARATE BLUNT FORCE, OR IT COULD BE A COMBINATION OF THE
09:44AM 22 TWO. IN FACT, HE SAID IT DOESN'T MATTER WHICH, BECAUSE THE LAW
09:44AM 23 COVERS ALL THREE. SO THE PROSECUTOR TOLD THE JURY, THE JURY
09:45AM 24 WAS INSTRUCTED THAT IT HAD THE OPTION OF ALL THREE.

09:45AM 25 THE COURT: NOW, MR. ELLIS IS ARGUING THAT THE

09:45AM 1 JURY WAS NOT INSTRUCTED IN THAT MANNER.

09:45AM 2 IS THAT WHAT YOU ARE ARGUING?

09:45AM 3 MR. ELLIS: NOT EXACTLY, YOUR HONOR. I'M SAYING
09:45AM 4 THEY WERE GIVEN THREE ALTERNATIVES. BUT WHAT I'M SAYING NOW
09:45AM 5 IS THAT FOR THIS JUDGE TO--FOR THIS COURT TO PUT ITSELF IN THE
09:45AM 6 SHOES OF WHETHER A REASONABLE JUROR WOULD HAVE A REASONABLE
09:45AM 7 DOUBT, WHICH IS WHAT I THINK THE HOUSE CASE SAYS, THAT WE
09:45AM 8 CANNOT SIMPLY EXCISE THE STRANGULATION, BECAUSE THE ABSENCE
09:45AM 9 OF STRANGULATION VASTLY WEAKENS THE WHOLE BLUNT-FORCE-INJURIES
09:45AM 10 THEORY, WHICH WAS NEVER PRESENTED TO THE JURORS AS THE STAND-
09:45AM 11 ALONE BLUNT-FORCE THEORY--

09:45AM 12 THE COURT: I'M NOT LOOKING AT THAT JURY. I'M
09:45AM 13 LOOKING AT A HYPOTHETICAL JURY OF REASONABLE PEOPLE.

09:45AM 14 MR. ELLIS: AND THIS IS--I AGREE, YOUR HONOR, THIS
09:45AM 15 IS WHAT WE'RE LOOKING AT. SO THE HYPOTHETICAL REASONABLE JUROR
09:45AM 16 WOULD CERTAINLY NOT BE IN THE SHOES OF THE ORIGINAL JURORS.
09:45AM 17 THEY WOULD HAVE A--WITH STRANGULATION NOT IN CONSIDERATION,
09:46AM 18 THEY WOULD HAVE SIMPLY THE BLUNT FORCE. AND THIS WOULD VASTLY
09:46AM 19 INFLUENCE HOW THE BLUNT-FORCE INJURY WOULD BE CONSIDERED.

09:46AM 20 THE COURT: YEAH. WELL, I THINK YOU'VE ANSWERED
09:46AM 21 MY QUESTION. BOTH OF YOU SEEM TO AGREE THAT THE JURY WAS
09:46AM 22 INSTRUCTED ON ALL THREE THEORIES OF THE CAUSE OF DEATH.

09:46AM 23 MS. MIRANDA: THE JURY WAS INSTRUCTED.

09:46AM 24 THE COURT: YEAH. OKAY. I JUST DIDN'T KNOW
09:46AM 25 WHETHER--EVEN THOUGH I CAN HEAR ALL OF THE EVIDENCE, WHETHER

09:46AM 1 IT WAS ADMITTED AT THAT TRIAL OR NOT AND INDEED WHETHER IT'S
09:46AM 2 EVEN ADMISSIBLE AT ANY TRIAL OR NOT, I DIDN'T KNOW WHETHER
09:46AM 3 I COULD BOTH DO THAT--AND I KNOW I CAN DO THAT--BUT WHETHER
09:46AM 4 I'M LIMITED BY THE THEORIES THAT THE JURY WAS CHARGED--THAT
09:46AM 5 PARTICULAR JURY WAS CHARGED ON.

09:46AM 6 AND IN READING THE HOUSE CASE, I'M NOT EVEN SURE I'M
09:46AM 7 LIMITED TO THAT. BUT IT DOESN'T MATTER HERE, BECAUSE YOU BOTH
09:46AM 8 AGREE THAT THE JURY THAT ACTUALLY HEARD THIS CASE WAS CHARGED
09:47AM 9 ON ALL THREE THEORIES.

09:47AM 10 MS. MIRANDA: THAT'S RIGHT, YES.

09:47AM 11 THE COURT: SO I THINK I CAN NOT WORRY ABOUT THAT.
09:47AM 12 OKAY. SO WHERE SHALL WE GO FROM HERE?

09:47AM 13 MR. ELLIS: FIRST OF ALL, WILL WE BE PROCEEDING BY
09:47AM 14 WAY OF A POST-HEARING BRIEF IN THIS CASE, YOUR HONOR?

09:47AM 15 THE COURT: BY WAY OF A POST-HEARING BRIEF?

09:47AM 16 MR. ELLIS: POST-HEARING BRIEF. WOULD THAT BE--

09:47AM 17 THE COURT: WELL, I MEAN, IF YOU CONVINCE ME THAT
09:47AM 18 I NEED ONE, THEN I'LL CERTAINLY LET YOU DO THAT. ARE YOU
09:47AM 19 THINKING THAT THAT WOULD HAVE A BEARING ON WHAT YOU WANT TO
09:47AM 20 PRESENT TO ME NOW?

09:47AM 21 MR. ELLIS: POSSIBLY. POSSIBLY, YES. BECAUSE IT
09:47AM 22 SEEMS LIKE WE ARE GETTING INTO FACTUAL AND LEGAL DISPUTES HERE
09:47AM 23 THAT I THINK CAN BE BEST ADDRESSED IN A POST-HEARING BRIEF. I
09:47AM 24 MEAN, THERE ARE--COUNSEL HAS POINTED TO A FEW INSTANCES IN THE
09:47AM 25 TRIAL WHERE BLUNT-FORCE INJURIES WERE REFERRED TO. I MEAN, I

09:48AM 1 CAN POINT TO DOZENS--DOZENS--WHERE STRANGULATION--PRIOR
09:48AM 2 STRANGULATION, DEATH BY STRANGULATION WAS THE THEORY AT TRIAL.
09:48AM 3 AND I THINK THAT THAT NEEDS TO BE--I THINK THE COURT NEEDS TO
09:48AM 4 CONSIDER THAT. I WOULD BE SPENDING--I'VE GOT 15 PAGES HERE OF
09:48AM 5 THAT WHICH I WOULD PREFER, I THINK, TO PUT INTO A POST-HEARING
09:48AM 6 BRIEF RATHER THAN SIMPLY DRONE ON HERE TO THE COURT ABOUT IT.
09:48AM 7 SO I THINK IT WOULD, IN THE INTEREST OF EFFICIENCY--

09:48AM 8 THE COURT: WELL, I MEAN, I'LL LET YOU BRIEF
09:48AM 9 WHATEVER YOU NEED TO BRIEF. I'M NOT NECESSARILY LOOKING FOR
09:48AM 10 MORE BRIEFING HERE. I WAS KIND OF HOPING TO HEAR THE EVIDENCE
09:48AM 11 HERE AND THEN GIVE YOU A RULING AT THE END OF THE HEARING,
09:48AM 12 BUT...

09:48AM 13 MS. MIRANDA: IF I MAY, YOUR HONOR, AND I DON'T WANT
09:48AM 14 TO SPEAK OUT OF TURN FOR MR. ELLIS, BUT I THINK PART OF WHAT
09:48AM 15 HE'S TRYING TO SAY, AND I WOULD AGREE IN ONE SENSE, IS THAT THE
09:48AM 16 EVIDENCE WILL SAY ONE THING, BUT THEN I KNOW, AT LEAST FROM OUR
09:48AM 17 PART, A HUGE PORTION OF OUR REBUTTAL TO THE ACTUAL INNOCENCE
09:49AM 18 IS GOING TO DEPEND ON ARGUMENTS BASED ON WHAT THE EXPERT SAYS.
09:49AM 19 BECAUSE OUR EXPERT IS GOING TO COME IN AND SAY YOU CAN'T TELL
09:49AM 20 WHETHER SHE WAS PUSHED OR JUMPED. SO THEN IT'S GOING TO BE
09:49AM 21 LEFT UP TO THE EVIDENCE AT TRIAL TO DETERMINE WHETHER IT WAS
09:49AM 22 ACCIDENTAL. AND THAT'S WHAT A REASONABLE JUROR WOULD HAVE TO
09:49AM 23 BASE THEIR OPINION ON.

09:49AM 24 SO I THINK WHAT HE'S TRYING TO SAY IS THAT WE CAN
09:49AM 25 PRESENT THESE WITNESSES, BUT THEN THERE'S STILL SOME ARGUMENT

09:49AM 1 TO BE MADE BASED ON THE EVIDENCE AT TRIAL--

09:49AM 2 THE COURT: IF YOU BOTH AGREE THAT POST-HEARING
09:49AM 3 BRIEFS ARE NEEDED, THEN THAT'S FINE, WE'LL DO THAT.

09:49AM 4 MS. MIRANDA: I MEAN, I HAVE NO OBJECTION TO HIS
09:49AM 5 REQUEST.

09:49AM 6 THE COURT: OKAY. THAT'S FINE. I WON'T MAKE A
09:49AM 7 RULING, THEN, AT THE END OF THIS HEARING, AND I'LL WAIT FOR
09:49AM 8 YOUR BRIEFS.

09:49AM 9 MR. ELLIS: THANK YOU, YOUR HONOR.

09:49AM 10 THE COURT: OKAY.

09:49AM 11 WHAT WITNESSES CAN YOU CALL AT THIS TIME, MR. ELLIS?

09:49AM 12 MR. ELLIS: YOUR HONOR, WE WOULD--THIS MORNING, WE
09:49AM 13 WOULD HAVE AVAILABLE NANCY ACKER.

09:49AM 14 THE COURT: OKAY. ALL RIGHT.

09:49AM 15 LET ME HAVE ALL OF THE WITNESSES--LET ME ASK COUNSEL
09:50AM 16 TO ASK ALL OF THEIR WITNESSES WHO ARE HERE IN THE COURTROOM OR
09:50AM 17 OUTSIDE THE COURTROOM TO COME UP HERE TO BE PLACED UNDER OATH.

09:50AM 18 MR. ELLIS, WHOEVER YOU HAVE IN THE COURTROOM THAT'S
09:50AM 19 GOING TO BE A WITNESS, I'LL NEED THAT PERSON TO COME UP HERE.

09:50AM 20 AND, MS. MIRANDA, WHOEVER YOU HAVE IN THE COURTROOM--

09:50AM 21 MS. MIRANDA: WE'RE GOING TO GET OUR EXPERT, YOUR
09:50AM 22 HONOR. HE'S OUTSIDE THE COURTROOM.

09:50AM 23 THE COURT: YOU JUST HAVE TWO WITNESSES. RIGHT?

09:50AM 24 MS. MIRANDA: YES, WE SHOULD JUST HAVE TWO.

09:50AM 25 THE COURT: GOOD MORNING.

09:50AM 1 THE WITNESS: GOOD MORNING.

09:50AM 2 THE COURT: LET ME WAIT UNTIL EVERYBODY COMES UP
09:50AM 3 HERE.

09:50AM 4 THE WITNESS: YES, SIR.

09:50AM 5 THE COURT: GOOD MORNING TO YOU, MA'AM.

09:50AM 6 THE WITNESS: YES, SIR. THANK YOU.

09:50AM 7 THE COURT: IT MAY TAKE ME A MINUTE TO GO THROUGH MY
09:50AM 8 LIST HERE.

09:50AM 9 MS. MIRANDA: WE'RE STILL LOOKING FOR--OH, THERE HE
09:50AM 10 IS--DR. DI MAIO.

09:50AM 11 THE COURT: LET ME START AND GET YOUR NAME, FIRST OF
09:50AM 12 ALL.

09:51AM 13 THE WITNESS: TONEY HURLEY.

09:51AM 14 MS. MIRANDA: I THINK THIS IS--SOME OF THE WITNESSES
09:51AM 15 THAT YOU PUT ON YOUR LIST, BUT I GUESS YOU ARE NOT CALLING, ARE
09:51AM 16 IN THE COURTROOM. I JUST WANTED TO MAKE SURE, BEFORE WE SWORE
09:51AM 17 THEM IN AND ASKED FOR THE RULE, THAT WE WERE CLEAR THAT THEY
09:51AM 18 WEREN'T GOING TO TESTIFY. OKAY? OKAY. I JUST WANTED TO MAKE
09:51AM 19 SURE.

09:51AM 20 THE COURT: WE HAVE TONEY HURLEY. DO YOU SPELL YOUR
09:51AM 21 NAME T-O-N-E-Y?

09:51AM 22 THE WITNESS: YES, SIR.

09:51AM 23 THE COURT: YOUR NAME, PLEASE, MA'AM?

09:51AM 24 THE WITNESS: NANCY ACKER.

09:51AM 25 THE COURT: OKAY.

09:52AM 1 AND YOUR NAME, PLEASE, SIR?

09:52AM 2 THE WITNESS: LEWIS TATUM.

09:52AM 3 THE COURT: I'M NOT SEEING MR. TATUM ON THE WITNESS
09:52AM 4 LIST. AM I MISSING THAT? LEWIS TATUM. WHO IS CALLING
09:53AM 5 MR. TATUM?

09:53AM 6 MR. ELLIS: I THINK I SUBPOENAED HIM. HE MAY HAVE
09:53AM 7 NOT BEEN ON THE WITNESS LIST. I THINK HE WAS ALSO CALLED FOR
09:53AM 8 WHAT MR. ANDERSON WOULD BE TESTIFYING TO, WHICH WAS STIPULATED
09:53AM 9 TO.

09:53AM 10 THE COURT: OKAY.

09:53AM 11 MS. MIRANDA, LEWIS TATUM IS HERE TO TESTIFY. ARE
09:53AM 12 YOU AWARE OF HIM?

09:53AM 13 MS. MIRANDA: HE LET ME KNOW, YES, YOUR HONOR.

09:53AM 14 THE COURT: OKAY.

09:53AM 15 THE COURT REPORTER: WOULD YOU SPELL LEWIS FOR ME.

09:53AM 16 THE WITNESS: L-E-W-I-S.

09:53AM 17 THE COURT REPORTER: THANK YOU.

09:53AM 18 THE COURT: AND TATUM IS T-A-T-U-M?

09:53AM 19 THE WITNESS: YES, SIR.

09:53AM 20 THE COURT: ALL RIGHT, SIR.

09:53AM 21 THE WITNESS: VINCENT J.M. DI MAIO.

09:54AM 22 THE COURT: OKAY.

09:54AM 23 THAT'S IT. NO OTHER WITNESSES IN THE COURTROOM
09:54AM 24 THEN? I GUESS NOT. ALL RIGHT.

09:54AM 25 WOULD ALL OF YOU RAISE YOUR RIGHT HAND AND BE PLACED

09:54AM 1 UNDER OATH.

09:54AM 2 DEPUTY COURT CLERK: DO YOU SWEAR THE TESTIMONY YOU
09:54AM 3 SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE THE TRUTH, THE
09:54AM 4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

09:54AM 5 VOICES: I DO.

09:54AM 6 THE COURT: DOES EITHER SIDE INVOKE THE RULE?

09:54AM 7 MS. MIRANDA: WE HAVEN'T, YOUR HONOR. WE ASK THAT
09:54AM 8 THE RULE BE INVOKED. WE JUST ASK THAT OUR EXPERT BE EXEMPTED
09:54AM 9 FROM THE RULE, AT LEAST WHEN THEIR EXPERT IS TESTIFYING.

09:54AM 10 THE COURT: OKAY.

09:54AM 11 MR. ELLIS: NO OBJECTION.

09:54AM 12 THE COURT: OKAY. SO YOU ARE INVOKING THE RULE
09:54AM 13 EXCEPT FOR EXPERTS?

09:54AM 14 MS. MIRANDA: YES.

09:54AM 15 THE COURT: ALL RIGHT.

09:54AM 16 I NEED TO TELL--WELL, LET'S SEE, SINCE WE DON'T
09:54AM 17 HAVE AN EXPERT WHO WILL BE TESTIFYING THIS MORNING, APPARENTLY,
09:54AM 18 DR. DI MAIO, YOU WOULD BE UNDER THE RULE TOO. SO I NEED TO
09:54AM 19 TELL YOU AND THE OTHER THREE WITNESSES THAT YOU WILL HAVE TO
09:55AM 20 REMAIN OUTSIDE THE COURTROOM UNTIL YOU ARE CALLED TO GIVE YOUR
09:55AM 21 TESTIMONY, AND YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANY OTHER
09:55AM 22 WITNESSES IN THIS CASE OR DISCUSS THE CASE WITH ANY OTHER
09:55AM 23 WITNESSES UNTIL WE FINISH THIS HEARING. OKAY? SO YOU'LL HAVE
09:55AM 24 TO WAIT OUTSIDE THE COURTROOM UNTIL YOU ARE CALLED TO COME IN.
09:55AM 25 JUST DON'T TALK ABOUT THE CASE TO OTHER--WITH OTHER WITNESSES.

09:55AM 1 YOU CAN CERTAINLY TALK TO MR. ELLIS, THOSE OF YOU WHO ARE HERE
09:55AM 2 FOR MR. ELLIS.

09:55AM 3 OKAY. WHO IS GOING TO BE THE FIRST WITNESS?

09:55AM 4 MR. ELLIS: WE CALL NANCY ACKER, PLEASE.

09:55AM 5 THE COURT: OKAY.

09:55AM 6 MS. ACKER, YOU CAN COME AROUND AND HAVE A SEAT OVER
09:55AM 7 HERE.

09:55AM 8 GENTLEMEN, THANK YOU VERY MUCH.

09:55AM 9 ARE THERE ANY OTHER WITNESSES OUTSIDE THE COURTROOM?

09:55AM 10 MS. MIRANDA, DO YOU HAVE ANY?

09:55AM 11 MS. MIRANDA: NOT THAT I KNOW OF, YOUR HONOR. MY
09:55AM 12 TWO ARE HERE.

09:55AM 13 THE COURT: ANY OTHER WITNESSES OUTSIDE THE COURT-
09:56AM 14 ROOM THAT YOU HAVE, MR. ELLIS?

09:56AM 15 MR. ELLIS: NOT THAT I KNOW OF.

09:56AM 16 THE COURT: OKAY.

09:56AM 17 DIRECT EXAMINATION OF NANCY ACKER ON BEHALF OF THE PETITIONER

09:56AM 18 MR. ELLIS:

09:56AM 19 Q. MS. ACKER, COULD YOU STATE AND SPELL YOUR NAME FOR THE
09:56AM 20 RECORD, PLEASE.

09:56AM 21 A. N-A-N-C-Y, A-C-K-E-R.

09:56AM 22 Q. HOW ARE YOU RELATED TO DANIEL CLATE ACKER?

09:56AM 23 A. I AM DANIEL'S MOTHER.

09:56AM 24 Q. AND WHERE DO YOU CURRENTLY LIVE?

09:56AM 25 A. SULPHUR SPRINGS.

09:56AM 1 Q. AND HAVE YOU LIVED THERE ALL YOUR LIFE?

09:56AM 2 A. WELL, FOR THE LAST 17 YEARS.

09:56AM 3 Q. AND WHERE WAS DANIEL BORN?

09:56AM 4 A. HE WAS BORN IN COMMERCE, TEXAS.

09:56AM 5 Q. AND DID HE GROW UP THERE?

09:56AM 6 A. [PAUSING]

09:57AM 7 Q. IN COMMERCE?

09:57AM 8 A. NO. THAT'S JUST THE HOSPITAL HE WAS BORN AT. WE DID
09:57AM 9 LIVE IN COOPER, AND THEN WE MOVED TO SULPHUR SPRINGS WHEN HE
09:57AM 10 WAS SEVEN YEARS OLD, I BELIEVE.

09:57AM 11 Q. AND WHERE DID HE ATTEND SCHOOL, ELEMENTARY AND HIGH
09:57AM 12 SCHOOL?

09:57AM 13 A. IN SULPHUR SPRINGS.

09:57AM 14 Q. AND WHEN DANIEL WAS YOUNG, WAS HE WHAT YOU WOULD CALL
09:57AM 15 VIOLENT?

09:57AM 16 A. NO.

09:57AM 17 Q. DID HE GET INTO FIGHTS FREQUENTLY?

09:57AM 18 A. NO.

09:57AM 19 Q. DID YOU KNOW THE VICTIM, MARKIE GEORGE?

09:57AM 20 A. YES.

09:57AM 21 Q. AND WHEN DID YOU FIRST MEET HER?

09:57AM 22 A. ABOUT JANUARY, I BELIEVE IT WAS.

09:58AM 23 Q. AND DID YOUR SON, DANIEL, AND MS. GEORGE BEGIN TO LIVE
09:58AM 24 TOGETHER AT A CERTAIN TIME?

09:58AM 25 A. YES, THEY DID.

09:58AM 1 Q. DO YOU REMEMBER WHEN THAT WAS?

09:58AM 2 A. I BELIEVE IT WAS IN FEBRUARY.

09:58AM 3 Q. NOW, MS. ACKER, I'M GOING TO ASK YOU TO REMEMBER BACK
09:58AM 4 TO WHEN DANIEL WAS ARRESTED FOR THE MURDER OF MS. GEORGE. DO
09:58AM 5 YOU REMEMBER THE DAY THAT HE WAS ARRESTED FOR THIS?

09:58AM 6 A. YES.

09:58AM 7 Q. AND DID YOU LEARN THAT DANIEL WAS LOOKING OR SEARCHING
09:58AM 8 FOR MS. GEORGE AT SOME TIME?

09:58AM 9 A. YES.

09:58AM 10 Q. AND HOW DID YOU LEARN ABOUT THAT?

09:58AM 11 A. I WAS CALLED AND TOLD ABOUT IT BY HIS SISTER DORCAS.

09:59AM 12 Q. AND WHAT TIME WAS THIS, ABOUT, THAT YOU RECEIVED--THIS
09:59AM 13 WAS BY PHONE, IS THAT CORRECT?

09:59AM 14 A. YES.

09:59AM 15 Q. AND WHAT TIME DID THE PHONE CALL COME IN?

09:59AM 16 A. I KNOW IT WAS BEFORE 10:00. IT MIGHT HAVE BEEN 9:00.

09:59AM 17 Q. DO YOU REMEMBER WHAT DAY OF THE WEEK THIS WAS?

09:59AM 18 A. SUNDAY.

09:59AM 19 Q. AND DO YOU NORMALLY ATTEND CHURCH SERVICES ON SUNDAY?

09:59AM 20 A. YES.

09:59AM 21 Q. AND AS A RESULT OF THE CALL, DID YOU ATTEND CHURCH
09:59AM 22 SERVICES?

09:59AM 23 A. NO.

09:59AM 24 Q. WHAT DID YOU DO?

09:59AM 25 A. I GOT DRESSED AND WENT LOOKING FOR DANIEL AND MARKIE,

09:59AM 1 EITHER ONE.

09:59AM 2 Q. AND WHERE DID YOU GO TO LOOK FOR THEM?

10:00AM 3 A. WELL, I DROVE AROUND, I WENT OUT TOWARDS WHERE THEY
10:00AM 4 LIVE--LIVED.

10:00AM 5 THE COURT: WOULD YOU SPEAK UP, MA'AM? YOU WENT
10:00AM 6 OUTDOORS?

10:00AM 7 THE WITNESS: I WENT TOWARDS--I WENT OUT TOWARDS
10:00AM 8 WHERE THEY LIVED, AND I CAME BACK TOWARDS TOWN AND WENT BY
10:00AM 9 WHERE DANIEL WORKED, AND THERE'S WHERE I SAW DANIEL.

10:00AM 10 MR. ELLIS:

10:00AM 11 Q. AND WHERE DID DANIEL WORK?

10:00AM 12 A. FOR MR. BENTLEY OF BENTLEY'S ELECTRIC.

10:00AM 13 Q. DO YOU KNOW WHAT HE DID AT BENTLEY ELECTRIC?

10:00AM 14 A. ELECTRICAL. ELECTRICAL WORK.

10:00AM 15 Q. I SEE. AND DO YOU REMEMBER APPROXIMATELY WHAT TIME
10:00AM 16 THIS WAS?

10:00AM 17 A. I'M NOT SURE. IT WAS--I'M SORRY, I CAN'T REMEMBER.
10:00AM 18 IT WAS...

10:01AM 19 Q. DID YOU SEE DANIEL AT BENTLEY ELECTRIC?

10:01AM 20 A. YES.

10:01AM 21 THE COURT: DID I HEAR THIS WAS ON A SUNDAY MORNING?

10:01AM 22 MR. ELLIS: YES, YOUR HONOR, THIS IS SUNDAY.

10:01AM 23 Q. DO YOU REMEMBER THE SPECIFIC DATE?

10:01AM 24 A. [PAUSING]

10:01AM 25 Q. IF I SAY MARCH 12TH--

10:01AM 1 A. THAT WAS THE DATE.

10:01AM 2 Q. AND THIS, AGAIN, IS THE YEAR 2000, IS THAT CORRECT?

10:01AM 3 A. YES.

10:01AM 4 Q. AND YOU SAID THAT YOU SAW DANIEL WHEN YOU WERE AT
10:01AM 5 BENTLEY ELECTRIC--WHEN YOU WENT TO BENTLEY ELECTRIC?

10:01AM 6 A. YES.

10:01AM 7 Q. WAS HE THERE ALREADY? OR DID HE SHOW UP AFTER YOU
10:01AM 8 ARRIVED?

10:01AM 9 A. NO, HE WAS THERE WHEN I GOT THERE.

10:01AM 10 Q. AND DID HE TELL YOU SOMETHING?

10:01AM 11 A. HE SAID MARKIE HAD JUMPED OUT OF THE TRUCK AND SHE WAS
10:01AM 12 DEAD.

10:01AM 13 Q. WAS DANIEL UPSET?

10:01AM 14 A. YES, HE WAS UPSET.

10:01AM 15 Q. AND HOW DID HE APPEAR? HIS APPEARANCE. WAS HE--DID
10:02AM 16 HE LOOK FRAZZLED, FRANTIC? OR HOW WOULD YOU DESCRIBE HIM?

10:02AM 17 A. HE LOOKED--HE LOOKED FRANTIC.

10:02AM 18 Q. AND WHAT HAPPENED THEN? WHERE DID YOU GO?

10:02AM 19 A. I WENT TO LOOK FOR MARKIE.

10:02AM 20 Q. DID YOU GO TO DANIEL'S TRAILER AFTER THAT?

10:02AM 21 A. YES.

10:02AM 22 Q. AND DID YOU TELL DANIEL TO DO ANYTHING?

10:02AM 23 A. I TOLD HIM THAT HE COULD--HE COULD GO TO DORCAS'S, THAT
10:02AM 24 I WAS GONNA GO LOOK FOR MARKIE, YOU KNOW, BECAUSE I HOPED THAT
10:03AM 25 SHE WAS NOT DEAD.

10:03AM 1 Q. WERE YOU AWARE OF ANY PRIOR ATTEMPTS BY MS. GEORGE TO
10:03AM 2 JUMP FROM A VEHICLE?

10:03AM 3 A. I NEVER SAW HER JUMP FROM ONE.

10:03AM 4 Q. HAD YOU HEARD ANYTHING ABOUT THAT?

10:03AM 5 A. I HAD HEARD THAT SHE JUMPED OR TRIED TO JUMP FROM
10:03AM 6 VEHICLES.

10:03AM 7 Q. NOW, WHEN DANIEL WAS ARRESTED, HE--AND THIS IS, AGAIN,
10:03AM 8 ON MARCH 12TH, THE YEAR 2000--HE WAS DETAINED, IS THAT CORRECT?

10:03AM 9 A. YES.

10:03AM 10 Q. AND SOME ATTORNEYS WERE APPOINTED TO REPRESENT HIM, IS
10:03AM 11 THAT CORRECT?

10:03AM 12 A. YES.

10:04AM 13 Q. DID YOU HAVE ANY CONTACT WITH THOSE ATTORNEYS?

10:04AM 14 A. YES, THEY WERE HIS ATTORNEYS.

10:04AM 15 Q. DO YOU REMEMBER THEIR NAMES?

10:04AM 16 A. MR. MCDOWELL AND...

10:04AM 17 Q. AND MR. FERGUSON?

10:04AM 18 A. AND MR. FERGUSON.

10:04AM 19 Q. AND DO YOU FEEL THAT THEY PROPERLY PREPARED FOR
10:04AM 20 DANIEL'S TRIAL?

10:04AM 21 MS. MIRANDA: YOUR HONOR, AT THIS POINT I'M GOING
10:04AM 22 TO OBJECT. THIS IS A HEARING ON ACTUAL INNOCENCE. I DON'T
10:04AM 23 BELIEVE THIS TESTIMONY IS RELEVANT. WHATEVER THE ATTORNEYS
10:04AM 24 DID OR DIDN'T DO IN PREPARATION FOR TRIAL IS NOT RELEVANT
10:04AM 25 TO WHETHER OR NOT HE'S ACTUALLY INNOCENT OF THIS CRIME.

10:04AM 1 THE COURT: MR. ELLIS?

10:04AM 2 MR. ELLIS: WELL, I THINK COUNSEL MIGHT BE RIGHT.

10:05AM 3 IT PERHAPS IS NOT RELEVANT TO THE ACTUAL-INNOCENCE ISSUE. IF

10:05AM 4 OTHER ISSUES ARE STILL ON THE TABLE, I MEAN, I DON'T SEE THE

10:05AM 5 HARM IN TAKING EVIDENCE AS TO OTHER ISSUES.

10:05AM 6 THE COURT: I ONLY GRANTED AN EVIDENTIARY HEARING ON

10:05AM 7 THE ACTUAL-INNOCENCE ISSUE.

10:05AM 8 MR. ELLIS: WELL, I--I--

10:05AM 9 THE COURT: I DON'T GET TO THE OTHER ISSUES UNLESS

10:05AM 10 YOU DEMONSTRATE ACTUAL INNOCENCE.

10:05AM 11 MR. ELLIS: FINE. THEN I THINK--I CAN'T SEE HOW IT

10:05AM 12 DIRECTLY RELATES TO ACTUAL INNOCENCE, YOUR HONOR.

10:05AM 13 THE COURT: ALL RIGHT. THEN I'LL SUSTAIN THE

10:05AM 14 OBJECTION.

10:05AM 15 MS. MIRANDA: THANK YOU, YOUR HONOR.

10:05AM 16 MR. ELLIS: I HAVE NO FURTHER QUESTIONS.

10:05AM 17 THE COURT: ALL RIGHT.

10:05AM 18 MS. MIRANDA.

10:05AM 19 CROSS-EXAMINATION OF NANCY ACKER ON BEHALF OF THE RESPONDENT

10:05AM 20 MS. MIRANDA:

10:05AM 21 Q. MS. ACKER, MY NAME IS TINA MIRANDA. I'M FROM THE

10:05AM 22 ATTORNEY GENERAL'S OFFICE. I WOULD LIKE TO ASK YOU JUST A

10:05AM 23 COUPLE OF QUESTIONS. YOU TESTIFIED EARLIER THAT YOUR SON,

10:06AM 24 DANIEL, WAS NOT VIOLENT OR DISPLAYED NO VIOLENT TENDENCIES AS

10:06AM 25 A CHILD. ISN'T IT TRUE THAT WHILE HE MAY NOT HAVE BEEN VIOLENT

10:06AM 1 AS A CHILD, HE WAS DEFINITELY VERY VIOLENT AS AN ADULT?

10:06AM 2 A. WHAT IS YOUR QUESTION?

10:06AM 3 Q. MY QUESTION IS: WAS HE NOT VIOLENT AS AN ADULT?

10:06AM 4 A. MEANING?

10:06AM 5 Q. MEANING ARE YOU AWARE OF THE FACT THAT HE WAS CHARGED
10:06AM 6 MULTIPLE TIMES WITH BEING PHYSICALLY ABUSIVE TO HIS EX-WIVES?

10:06AM 7 A. EX-WIVES? WHICH--I MEAN--

10:06AM 8 Q. WELL, LET ME ASK YOU THIS QUESTION. WAS DANIEL MARRIED
10:06AM 9 BEFORE?

10:06AM 10 A. YES, HE WAS.

10:06AM 11 Q. OKAY. TO WHOM WAS HE MARRIED?

10:06AM 12 A. HE WAS MARRIED TO SUSAN AND HE WAS MARRIED TO SHIRLEY.

10:06AM 13 Q. OKAY. LET'S TALK ABOUT SUSAN FOR A SECOND. WERE YOU
10:07AM 14 PRESENT AT THE TRIAL DURING THE PUNISHMENT PHASE?

10:07AM 15 A. I --

10:07AM 16 MR. ELLIS: IRRELEVANT, YOUR HONOR.

10:07AM 17 MS. MIRANDA: I BELIEVE HE OPENED THE DOOR--

10:07AM 18 THE COURT: ARE YOU ASKING IF SHE HEARD WHAT SUSAN
10:07AM 19 SAID OR SOMETHING?

10:07AM 20 MS. MIRANDA: SHE TESTIFIED--OR, AT LEAST, HE ASKED
10:07AM 21 HER WHETHER HE WAS VIOLENT. AND I'M JUST TRYING TO COUNTER
10:07AM 22 THAT.

10:07AM 23 THE COURT: ASKED THIS WITNESS?

10:07AM 24 MS. MIRANDA: YES.

10:07AM 25 THE COURT: OKAY. I'LL OVERRULE THE OBJECTION. GO

10:07AM 1 AHEAD.

10:07AM 2 WERE YOU PRESENT DURING THE PUNISHMENT PHASE OF YOUR
10:07AM 3 SON'S TRIAL?

10:07AM 4 THE WITNESS: YES, I WAS THERE.

10:07AM 5 THE COURT: OKAY.

10:07AM 6 MS. MIRANDA:

10:07AM 7 Q. SO WERE YOU AWARE OF THE FACT THAT BOTH OF HIS EX-WIVES
10:07AM 8 TESTIFIED THAT THEY WERE REPEATEDLY PHYSICALLY ABUSED BY DANIEL
10:07AM 9 DURING THEIR RELATIONSHIPS?

10:07AM 10 A. I KNOW THEY BOTH TESTIFIED THAT THEY WERE ABUSED. I
10:07AM 11 DON'T--I DON'T KNOW--I DON'T HAVE A RECORD OF EXACTLY WHAT THEY
10:08AM 12 SAID.

10:08AM 13 Q. OKAY. AND I APOLOGIZE, BECAUSE I'M NOT ASKING YOU FOR
10:08AM 14 A RECORD OF WHAT THEY SAID. AND LET ME JUST--WE CAN PROBABLY
10:08AM 15 CLEAR THIS UP. YOU ARE NOT HERE TELLING THE COURT THAT YOUR
10:08AM 16 SON WAS NOT A VIOLENT PERSON AS AN ADULT, ARE YOU?

10:08AM 17 A. WHAT WOULD I--THEY DID NOT ALWAYS GET ALONG.

10:08AM 18 MS. MIRANDA: I'LL MOVE ON, YOUR HONOR.

10:08AM 19 THE COURT: OKAY.

10:08AM 20 NOW, LADIES, YOU ARE GOING TO HAVE TO KEEP YOUR
10:08AM 21 LAUGHTER TO YOURSELF OR YOU ARE GOING TO HAVE TO LEAVE. OKAY?
10:08AM 22 I DON'T KNOW IF YOU WERE LAUGHING OR WHAT. ARE YOU HERE--ARE
10:08AM 23 YOU FAMILY MEMBERS? OF WHAT FAMILY? THE ACKER FAMILY? OKAY.

10:08AM 24 GO AHEAD.

10:08AM 25 MS. MIRANDA: I'LL MOVE ON, YOUR HONOR.

10:08AM 1 Q. THE LAST THING I JUST WANT TO CLEAR UP: WHEN YOU
10:09AM 2 TESTIFIED, YOU NEVER ACTUALLY SAW MS. GEORGE JUMP FROM ANY
10:09AM 3 TRUCK, DID YOU?

10:09AM 4 A. I HAVE NOT SEEN HER JUMP FROM A TRUCK, NO, MA'AM.

10:09AM 5 Q. OKAY. AND YOU WERE NOT PRESENT WITH MR. ACKER ON THE
10:09AM 6 DAY OF THE MURDER, WHEN MS. GEORGE DIED, WERE YOU?

10:09AM 7 A. NO.

10:09AM 8 MS. MIRANDA: THANK YOU.

10:09AM 9 NO FURTHER QUESTIONS.

10:09AM 10 THE COURT: OKAY.

10:09AM 11 MR. ELLIS?

10:09AM 12 MR. ELLIS: NOTHING FURTHER, YOUR HONOR.

10:09AM 13 THE COURT: IS THIS WITNESS EXCUSED, THEN?

10:09AM 14 MR. ELLIS: WE WOULD EXCUSE HER, YOUR HONOR. MAY
10:09AM 15 SHE BE ALLOWED TO STAY IN THE COURTROOM?

10:09AM 16 THE COURT: IF YOU ARE NOT GOING TO RECALL HER.

10:09AM 17 MR. ELLIS: I DON'T BELIEVE WE WILL.

10:09AM 18 THE COURT: DO YOU ANTICIPATE RECALLING HER,
10:09AM 19 MS. MIRANDA?

10:09AM 20 MS. MIRANDA: NO, YOUR HONOR.

10:09AM 21 THE COURT: OKAY.

10:09AM 22 THANK YOU, MS. ACKER. YOU CAN HAVE A SEAT IN THE
10:09AM 23 COURTROOM IF YOU WANT TO.

10:09AM 24 THE WITNESS: THANK YOU.

10:09AM 25 THE COURT: WHO IS YOUR NEXT WITNESS?

10:09AM 1 MR. ELLIS: WE WOULD CALL LEWIS TATUM.

10:09AM 2 THE COURT: OKAY.

10:10AM 3 MR. TATUM, COME OVER AND HAVE A SEAT IN THE WITNESS
10:10AM 4 STAND.

10:10AM 5 MR. ELLIS.

10:10AM 6 DIRECT EXAMINATION OF LEWIS TATUM ON BEHALF OF THE PETITIONER

10:10AM 7 MR. ELLIS:

10:10AM 8 Q. MR. TATUM, COULD YOU STATE AND SPELL YOUR NAME FOR THE
10:10AM 9 RECORD, PLEASE.

10:10AM 10 A. LEWIS TATUM, L-E-W-I-S, T-A-T-U-M.

10:10AM 11 Q. AND, MR. TATUM, WHAT IS YOUR CURRENT OCCUPATION?

10:10AM 12 A. I'M AN INVESTIGATOR FOR THE SHERIFF'S DEPARTMENT,
10:10AM 13 HOPKINS COUNTY.

10:10AM 14 Q. AND WHAT WAS YOUR OCCUPATION IN FEBRUARY AND MARCH OF
10:10AM 15 THE YEAR 2000?

10:10AM 16 A. I WAS A DEPUTY ON THE NIGHT SHIFT PATROL.

10:10AM 17 Q. AND THIS IS IN THE HOPKINS COUNTY SHERIFF'S DEPARTMENT?

10:11AM 18 A. YES, SIR.

10:11AM 19 Q. AND LET ME ASK YOU IF YOU RECALL BEING DISPATCHED TO A
10:11AM 20 RESIDENCE ON FEBRUARY 26TH OF THE YEAR 2000, AT 10:40 OR SO AT
10:11AM 21 NIGHT, IN REFERENCE TO A 911 CALL ABOUT AN ALLEGED ASSAULT IN
10:11AM 22 PROGRESS.

10:11AM 23 A. NO, SIR, I DON'T HAVE ANY RECOLLECTION OF THAT CALL.
10:11AM 24 ALL I HAVE IS THE INCIDENT THAT YOU FAXED ME.

10:11AM 25 MR. ELLIS: MAY I APPROACH, YOUR HONOR?

10:11AM 1 THE COURT: YES.

10:11AM 2 MR. ELLIS:

10:11AM 3 Q. MR. TATUM, IS THIS THE REPORT--

10:11AM 4 A. YES, SIR.

10:11AM 5 Q. --THAT WE'RE REFERRING TO?

10:11AM 6 A. YES, SIR.

10:12AM 7 MR. ELLIS: I THINK I SHOULD PUT IT UP ON THE SCREEN
10:12AM 8 HERE FOR THE BENEFIT OF THE COURT.

10:12AM 9 THE COURT: ARE YOU GOING TO OFFER IT INTO EVIDENCE
10:12AM 10 HERE?

10:12AM 11 MR. ELLIS: YES, I AM, YOUR HONOR.

10:12AM 12 THE COURT: I'M RESTRICTED ON EVEN MAKING RULINGS ON
10:12AM 13 EVIDENCE. THAT'S AN UNUSUAL PARAMETER FOR A HEARING.

10:12AM 14 MR. ELLIS: YES, IT IS.

10:12AM 15 THE COURT: I SUPPOSE YOU CAN PUT UP WHATEVER YOU
10:12AM 16 WANT TO. BUT WE NEED TO KEEP A RECORD OF WHAT YOU ARE SHOWING
10:12AM 17 ME. SO CAN WE HAVE THAT MARKED AS PETITIONER'S EXHIBIT 1?

10:12AM 18 MR. ELLIS: OKAY. SHOULD I GIVE THE HARD COPY--

10:12AM 19 THE COURT: IF YOU COULD JUST BRING IT UP HERE
10:12AM 20 AND LET MS. BATES MARK IT, THEN YOU CAN PUT IT BACK ON THE
10:12AM 21 PROJECTOR.

10:13AM 22 MR. ELLIS: I'VE GOT AN EXTRA COPY.

10:13AM 23 THE COURT: OH, YOU DO? OKAY.

10:13AM 24 MR. ELLIS: I'M HAVING A LITTLE PROBLEM WITH THIS
10:13AM 25 MACHINE HERE.

10:13AM 1 THE COURT: OKAY. LET'S SEE. WHERE'S ANDREW?

10:13AM 2 LORI, WE MAY NEED ANDREW, UNLESS YOU KNOW HOW TO DO IT.

10:13AM 3 MS. MIRANDA, I ASSUME YOU HAVE NO OBJECTION TO

10:13AM 4 PETITIONER'S EXHIBIT 1.

10:13AM 5 MS. MIRANDA: NO, YOUR HONOR. AS THE COURT SAID,
10:13AM 6 IT'S ALL ADMISSIBLE.

10:13AM 7 THE COURT: ALL ADMISSIBLE? OKAY.

10:13AM 8 MR. ELLIS:

10:13AM 9 Q. NOW, IS IT DEPUTY TATUM OR OFFICER TATUM?

10:13AM 10 A. I'M ACTUALLY AN INVESTIGATOR NOW.

10:13AM 11 Q. INVESTIGATOR TATUM, THEN. BASICALLY, THE REPORT--IS
10:14AM 12 THAT YOUR HANDWRITING ON THE REPORT?

10:14AM 13 A. YES, IT IS.

10:14AM 14 Q. AND IS THAT YOUR SIGNATURE AT THE BOTTOM OF THE REPORT?

10:14AM 15 A. WELL, THAT'S WHERE I WROTE MY NAME. I DIDN'T ACTUALLY
10:14AM 16 SIGN IT. THAT'S JUST WHERE I WROTE MY NAME.

10:14AM 17 Q. OKAY. AND YOU WROTE THAT--IN OTHER WORDS, YOU WROTE
10:14AM 18 THIS REPORT, IS THAT CORRECT?

10:14AM 19 A. YES, SIR.

10:14AM 20 Q. AND DID YOU--YOU TOOK A STATEMENT FROM MARKIE GEORGE
10:14AM 21 IS WHAT THE REPORT INDICATES, IS THAT CORRECT?

10:14AM 22 A. JUST A VERBAL STATEMENT. FROM WHAT THIS RECORD
10:14AM 23 INDICATES, SIR, NOBODY WANTED TO FILE ANY CHARGES.

10:14AM 24 Q. AND DID YOU KNOW MARKIE GEORGE AT THE TIME?

10:14AM 25 A. NO, SIR.

10:14AM 1 Q. YOU HAD NEVER COME INTO CONTACT WITH HER BEFORE
10:14AM 2 FEBRUARY 26TH, THE YEAR 2000?

10:14AM 3 A. NOT THAT I HAVE ANY RECOLLECTION, NO, SIR.

10:14AM 4 Q. DID YOU KNOW MR. ACKER AT THE TIME? DANIEL ACKER.

10:14AM 5 A. NO, SIR.

10:14AM 6 Q. AND WAS HE--WAS MR. ACKER PRESENT WHEN YOU TOOK THE
10:14AM 7 STATEMENT FROM MARKIE GEORGE?

10:14AM 8 A. BY WHAT I'VE WROTE HERE, NO, SIR, I DO NOT BELIEVE HE
10:15AM 9 WAS.

10:15AM 10 Q. AND THE REPORT STATES THE CALL WAS TO CR 2450. IS THAT
10:15AM 11 COUNTY ROAD 2450?

10:15AM 12 A. YES, SIR.

10:15AM 13 Q. AND THE REPORT STATES THAT, "MS. GEORGE HAD TRIED TO
10:15AM 14 JUMP OUT OF THE PICKUP." AND YOU WROTE THAT IN THE REPORT, IS
10:15AM 15 THAT CORRECT?

10:15AM 16 A. LET'S SEE. CORRECT.

10:15AM 17 Q. AND DID MS. GEORGE TELL THAT YOU?

10:15AM 18 A. I DID NOT MAKE A RECORD OF THAT IN THIS REPORT. IT WAS
10:15AM 19 EITHER MS. ACKER OR MS. GEORGE, ONE, SAID THAT. I HAVE NO WAY
10:15AM 20 OF KNOWING.

10:15AM 21 Q. AND THE REPORT ALSO SAYS THAT MR. ACKERS--I THINK YOU
10:16AM 22 HAVE "ACKERS" THERE--HE CAUGHT HER BY THE ARM AND PULLED HER
10:16AM 23 BACK INTO THE VEHICLE. NOW, IS THAT WHAT SHE TOLD YOU?

10:16AM 24 A. SOMEONE DID.

10:16AM 25 Q. AND DOES THE REPORT ACCURATELY RELATE WHAT YOU WERE

10:16AM 1 TOLD BY MS. GEORGE AND MS. ACKER?

10:16AM 2 A. SIR, I REALLY HAVE NO WAY OF KNOWING. THIS IS JUST
10:16AM 3 AN INCIDENT REPORT. WHEN WE WENT TO THE CALL--ON ANY CALL, IF
10:16AM 4 NOBODY WANTED TO FILE ANY CHARGES, WE JUST MADE A BRIEF SUMMARY
10:16AM 5 OF THE CALL, WROTE IT DOWN FOR THE RECORD, AND THEN LEFT.

10:16AM 6 MR. ELLIS: THANK YOU.

10:16AM 7 YOUR HONOR, HAS THIS ALREADY BEEN OFFERED AS
10:16AM 8 PETITIONER'S EXHIBIT 1?

10:16AM 9 THE COURT: I THINK I ADMITTED IT. PETITIONER'S
10:16AM 10 EXHIBIT 1 IS ADMITTED.

10:16AM 11 MR. ELLIS: THANK YOU.

10:16AM 12 NO FURTHER QUESTIONS, YOUR HONOR.

10:16AM 13 THE COURT: OKAY.

10:17AM 14 MS. MIRANDA.

10:17AM 15 CROSS-EXAMINATION OF LEWIS TATUM ON BEHALF OF THE RESPONDENT

10:17AM 16 MS. MIRANDA:

10:17AM 17 Q. JUST TO MAKE SURE THAT THE RECORD IS AS CLEAR AS
10:17AM 18 POSSIBLE, THIS INCIDENT THAT WE'RE TALKING ABOUT IS COMPLETELY
10:17AM 19 SEPARATE FROM THE INCIDENT WHERE MS. GEORGE DIED, IS THAT
10:17AM 20 CORRECT?

10:17AM 21 A. YES, MA'AM.

10:17AM 22 Q. AND IN EITHER INCIDENT, YOU HAVE NO INDEPENDENT
10:17AM 23 KNOWLEDGE AS TO WHETHER SHE JUMPED OUT OF A VEHICLE. CORRECT?

10:17AM 24 A. NO, MA'AM.

10:17AM 25 MS. MIRANDA: THANK YOU.

10:17AM 1 NO FURTHER QUESTIONS.

10:17AM 2 THE COURT: OKAY.

10:17AM 3 ANY OTHER QUESTIONS, MR. ELLIS?

10:17AM 4 REDIRECT EXAMINATION OF LEWIS TATUM ON BEHALF OF THE PETITIONER

10:17AM 5 MR. ELLIS:

10:17AM 6 Q. MR. TATUM, I NOTE ON THE SIXTH LINE--FIFTH LINE OF THE
10:17AM 7 REPORT IT SAYS THAT MS. GEORGE ADVISED THAT HER AND MR. ACKER
10:18AM 8 HAD BEEN AT "BUSTIN LOOSE," WHERE THEY HAD GOTTEN INTO AN
10:18AM 9 ARGUMENT, IS THAT CORRECT? REFERRING YOU TO LINE 5.

10:18AM 10 A. LET'S SEE. OR 6, I BELIEVE. MS. GEORGE ADVISED THAT
10:18AM 11 HER AND MR. ACKER HAD BEEN AT "BUSTIN LOOSE," YES, SIR.

10:18AM 12 Q. OR 6, I'M SORRY.

10:18AM 13 AND THEN THE NEXT SENTENCE IS, "WHEN THEY STARTED
10:18AM 14 TO THE RESIDENCE." IT INDICATES THAT MS. GEORGE IS GIVING YOU
10:18AM 15 THIS STATEMENT THEN, IS THAT NOT CORRECT?

10:18AM 16 A. SIR, I REALLY--I CAN'T SAY, TO BE TRUTHFUL. I DO NOT
10:18AM 17 KNOW IF SHE WAS TELLING ME THIS OR MS. ACKER WAS.

10:18AM 18 Q. WELL, IT SAYS--THE SENTENCE IS, "WHEN THEY STARTED
10:18AM 19 TO THE RESIDENCE ON 2450, WHICH WAS MR. ACKER'S MOTHER'S
10:18AM 20 RESIDENCE, MS. GEORGE HAD TRIED TO JUMP OUT OF THE PICKUP."
10:19AM 21 MS. GEORGE DIDN'T SAY MS. ACKER WAS IN THE PICKUP, DID SHE?

10:19AM 22 A. SIR, I HAVE NO WAY OF KNOWING. THIS HAPPENED 11 YEARS
10:19AM 23 AGO. I DON'T KNOW.

10:19AM 24 MS. MIRANDA: YOUR HONOR, AT THIS POINT I WOULD
10:19AM 25 OBJECT AS ARGUMENTATIVE. HE'S ALREADY TESTIFIED HE HAS NO

10:19AM 1 INDEPENDENT RECOLLECTION OF WHAT HAPPENED. WHAT HE KNOWS IS
10:19AM 2 REFLECTED IN THE REPORT. SO TO ARGUE WITH HIM OVER WHAT IT
10:19AM 3 MEANS IN THE REPORT IS POINTLESS.

10:19AM 4 EXAMINATION OF LEWIS TATUM BY THE COURT

10:19AM 5 THE COURT:

10:19AM 6 Q. LET'S SEE. IS IT DEPUTY TATUM? ARE YOU A SHERIFF'S
10:19AM 7 DEPUTY NOW?

10:19AM 8 A. I'M AN INVESTIGATOR FOR THE SHERIFF'S DEPARTMENT, YES,
10:19AM 9 SIR.

10:19AM 10 Q. YOU DON'T REMEMBER, THEN, WHO--LET'S SEE. IT LOOKS
10:19AM 11 FROM YOUR REPORT--DO YOU HAVE IT THERE ON YOUR SCREEN?

10:19AM 12 A. YES, SIR. WELL, I'VE GOT A COPY OF IT HERE.

10:19AM 13 Q. ALL RIGHT. IT SAYS, IF YOU GO DOWN TO THE SIXTH LINE,
10:19AM 14 "MS. GEORGE ADVISED THAT SHE AND MR. ACKER HAD BEEN AT 'BUSTIN
10:20AM 15 LOOSE' WHERE THEY HAD GOTTEN INTO AN ARGUMENT. WHEN THEY
10:20AM 16 STARTED TO THE RESIDENCE ON COUNTY ROAD 2450, WHICH WAS
10:20AM 17 MR. ACKER'S MOTHER'S RESIDENCE, MS. GEORGE HAD TRIED TO JUMP
10:20AM 18 OUT OF THE PICKUP." SO YOU DON'T KNOW IF MS. GEORGE TOLD YOU
10:20AM 19 THAT OR WHO TOLD YOU THAT SHE HAD TRIED TO JUMP OUT OF THE
10:20AM 20 PICKUP?

10:20AM 21 A. NO, SIR, I DO NOT. WHEN WE TAKE AN OFFENSE REPORT,
10:20AM 22 WE TAKE STATEMENTS FROM THE WITNESSES AND THE VICTIMS IF WE'RE
10:20AM 23 GOING TO ACTUALLY PURSUE THE CASE.

10:20AM 24 WHEN IT'S JUST AN INCIDENT, YOU JUST MAKE NOTES OF
10:20AM 25 THE INCIDENT AND GO ON.

10:20AM 1 Q. BECAUSE NOBODY WAS ASKING YOU TO PRESS ANY CHARGES
10:20AM 2 AGAINST ANYBODY ELSE?

10:20AM 3 A. NO, SIR.

10:20AM 4 THE COURT: OKAY.

10:20AM 5 NOW, WHAT PARTICULAR POINT DID YOU WANT TO MAKE,
10:20AM 6 MR. ELLIS? APPARENTLY HE CAN'T RECALL ANYTHING OTHER THAN
10:20AM 7 JUST WHAT'S IN THIS--

10:20AM 8 MR. ELLIS: I THINK THAT COVERS IT, YOUR HONOR.
10:20AM 9 I THINK THAT'S MADE.

10:20AM 10 THE COURT: OKAY.

10:20AM 11 MR. ELLIS: THANK YOU. NO FURTHER QUESTIONS.

10:20AM 12 THE COURT: MS. MIRANDA, ANYTHING?

10:20AM 13 MS. MIRANDA: NO.

10:20AM 14 THE COURT: NO FURTHER QUESTIONS. OKAY. IS THIS
10:20AM 15 WITNESS EXCUSED SUCH THAT HE CAN EITHER GO BACK TO WORK OR STAY
10:21AM 16 IN THE COURTROOM IF HE WANTS TO, MR. ELLIS?

10:21AM 17 MR. ELLIS: ON BEHALF OF THE PETITIONER.

10:21AM 18 THE COURT: BOTH OF YOU PLEASE USE YOUR MICROPHONES
10:21AM 19 WHEN YOU GO BACK TO COUNSEL TABLE.

10:21AM 20 MS. MIRANDA, ANY OBJECTION TO EXCUSING THE WITNESS?

10:21AM 21 MS. MIRANDA: NO, YOUR HONOR.

10:21AM 22 THE COURT: OKAY. ALL RIGHT.

10:21AM 23 THANK YOU, MR. TATUM.

10:21AM 24 THE WITNESS: YES, SIR.

10:21AM 25 THE COURT: MR. ELLIS, WHO IS NEXT?

10:21AM 1 MR. ELLIS: MAY I SEE WHO IS OUTSIDE, YOUR HONOR?

10:21AM 2 THE COURT: DO WHAT? I'M SORRY.

10:21AM 3 MR. ELLIS: MAY I SEE WHO IS OUTSIDE?

10:21AM 4 THE COURT: SURE.

10:21AM 5 MR. ELLIS: I'M NOT SURE I HAVE ANYBODY ELSE.

10:21AM 6 THE COURT: OKAY.

10:22AM 7 MR. ELLIS: YOUR HONOR, I DO NOT HAVE ANY OTHER
10:22AM 8 WITNESSES.

10:22AM 9 THE COURT: WOULD YOU COME UP TO THE PODIUM AND SAY
10:22AM 10 THAT INTO A MICROPHONE, PLEASE.

10:22AM 11 MR. ELLIS: YOUR HONOR, THIS MORNING, I DO NOT HAVE
10:22AM 12 ANY WITNESSES OUT THERE. THE REST OF MY WITNESSES WILL BE
10:22AM 13 COMING IN AT 1:00.

10:22AM 14 THE COURT: 1:00. OKAY.

10:22AM 15 MS. MIRANDA, DO YOU HAVE WITNESSES THAT YOU CAN PUT
10:22AM 16 ON NOW?

10:22AM 17 MS. MIRANDA: YES. WE CAN PUT ON DR. DI MAIO.

10:22AM 18 THE COURT: ALL RIGHT. WOULD YOU HAVE HIM COME IN,
10:22AM 19 PLEASE.

10:23AM 20 DR. DI MAIO, JUST COME ON UP AND HAVE A SEAT IN THE
10:23AM 21 WITNESS STAND, PLEASE.

10:23AM 22 THE WITNESS: THANK YOU, YOUR HONOR.

10:23AM 23 THE COURT: OKAY, MS. MIRANDA.

10:23AM 24

10:23AM 25

10:23AM 1 DIRECT EXAMINATION OF VINCENT J.M. DI MAIO ON BEHALF OF THE
10:23AM 2 RESPONDENT

10:23AM 3 MS. MIRANDA:

10:23AM 4 Q. WOULD YOU STATE YOUR NAME AND SPELL IT FOR THE RECORD.

10:23AM 5 A. MY NAME IS DR. VINCENT J.M. DI MAIO.

10:23AM 6 Q. OKAY.

10:23AM 7 A. D-I-M-A-I-O.

10:23AM 8 Q. ALL RIGHT. WOULD YOU TELL US A LITTLE BIT ABOUT YOUR
10:23AM 9 EDUCATIONAL BACKGROUND.

10:23AM 10 A. YES, MA'AM. I OBTAINED MY MEDICAL DEGREE IN 1965 FROM
10:23AM 11 THE STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER IN
10:24AM 12 NEW YORK CITY.

10:24AM 13 I THEN DID A YEAR INTERNSHIP IN PATHOLOGY AT DUKE
10:24AM 14 HOSPITAL IN DURHAM, NORTH CAROLINA, AND THREE YEARS OF
10:24AM 15 RESIDENCY IN ANATOMICAL AND CLINICAL PATHOLOGY AT THE DOWNSTATE
10:24AM 16 MEDICAL CENTER IN NEW YORK.

10:24AM 17 I FOLLOWED THAT WITH A YEAR TRAINING IN THE FIELD OF
10:24AM 18 FORENSIC PATHOLOGY AT THE OFFICE OF THE CHIEF MEDICAL EXAMINER
10:24AM 19 FOR THE STATE OF MARYLAND.

10:24AM 20 FOLLOWING THAT, I TOOK MY SPECIALTY BOARDS AND WAS
10:24AM 21 CERTIFIED AS AN EXPERT IN THE FIELDS OF ANATOMICAL PATHOLOGY,
10:24AM 22 CLINICAL PATHOLOGY AND FORENSIC PATHOLOGY.

10:24AM 23 Q. OKAY. WHAT ABOUT POSITIONS THAT YOU HAVE HELD?

10:24AM 24 A. AFTER I FINISHED MY TRAINING, I WENT INTO THE ARMY
10:24AM 25 FOR TWO YEARS. I WAS ASSIGNED TO THE ARMED FORCES INSTITUTE

10:24AM 1 OF PATHOLOGY IN WASHINGTON, D.C., WHERE I WAS CHIEF OF THE
10:24AM 2 MEDICOLEGAL SECTION FOR ONE YEAR, CHIEF OF THE WOUND BALLISTIC
10:24AM 3 SECTION THE SECOND YEAR.

10:24AM 4 I LEFT THE MILITARY, MOVED TO DALLAS, WAS A MEDICAL
10:25AM 5 EXAMINER IN DALLAS FROM 1972 TO 1981.

10:25AM 6 I LEFT DALLAS TO GO TO SAN ANTONIO, WHERE I BECAME
10:25AM 7 CHIEF MEDICAL EXAMINER IN SAN ANTONIO ON MARCH THE 1ST, 1981.
10:25AM 8 I WAS CHIEF UNTIL DECEMBER 31ST, 2006, WHEN I RETIRED.

10:25AM 9 AND SINCE THEN I'VE BEEN IN THE PRIVATE PRACTICE OF
10:25AM 10 FORENSIC PATHOLOGY.

10:25AM 11 Q. OKAY. IF IT'S POSSIBLE, DR. DI MAIO, CAN YOU--

10:25AM 12 MR. ELLIS: YOUR HONOR, WE WOULD STIPULATE TO
10:25AM 13 DR. DI MAIO AS AN EXPERT.

10:25AM 14 MS. MIRANDA: OKAY. THAT'S FINE, YOUR HONOR, IF
10:25AM 15 HE WANTS TO STIPULATE TO HIS EXPERTISE.

10:25AM 16 THE COURT: OKAY. THAT'S FINE.

10:25AM 17 MS. MIRANDA: WE CAN SAVE SOME TIME AND MOVE ON.

10:25AM 18 THE COURT: SURE. GO AHEAD AND GET INTO YOUR
10:25AM 19 SUBSTANTIVE QUESTIONS.

10:25AM 20 MS. MIRANDA: ALL RIGHT.

10:25AM 21 Q. CAN YOU TELL ME WHAT MATERIALS YOU REVIEWED FOR THIS
10:25AM 22 CASE?

10:25AM 23 A. YES, MA'AM. I REVIEWED THE AUTOPSY REPORT, PHOTOGRAPHS
10:25AM 24 OF THE BODY AND SCENE, THE REPORT OF DR. LARKIN, HIS OPINION,
10:26AM 25 AND TRIAL TRANSCRIPTS VOLUMES 19 THROUGH 22.

10:26AM 1 Q. OKAY. AND BEFORE WE GET INTO THE OPINIONS THAT YOU
10:26AM 2 RENDERED IN THIS CASE, I JUST WANTED TO BE CLEAR ON THE LIMITED
10:26AM 3 INQUIRY THAT I ASKED OF YOU TO DO IN THIS CASE. CAN YOU TELL
10:26AM 4 THE COURT WHAT IT WAS THAT I ASKED YOU TO LOOK AT IN THIS CASE?

10:26AM 5 A. ESSENTIALLY TO ADDRESS THE CAUSE AND MATTER OF DEATH
10:26AM 6 IN THIS CASE, THE NATURE OF THE INJURIES, WHAT KILLED THE
10:26AM 7 DECEASED.

10:26AM 8 Q. OKAY. AND, SPECIFICALLY, DID I ASK YOU TO LIMIT YOUR
10:26AM 9 REVIEW MAINLY TO SIMPLY THE MEDICAL EVIDENCE IN THIS CASE?

10:26AM 10 A. YES, MA'AM. THAT'S WHAT I WAS SAYING.

10:26AM 11 Q. OKAY.

10:26AM 12 NOW, AGAIN, BEFORE WE GET INTO YOUR OPINIONS,
10:26AM 13 CAN YOU TELL ME A LITTLE BIT ABOUT HOW THE PROCESS WORKS IN
10:26AM 14 FORENSIC PATHOLOGY AS FAR AS DETERMINING CAUSE OF DEATH, WHAT
10:26AM 15 THINGS YOU TYPICALLY CONSIDER?

10:26AM 16 A. ESSENTIALLY, FORENSIC PATHOLOGISTS WORK LIKE ALL
10:27AM 17 PHYSICIANS. THE FIRST THING YOU ARE TAUGHT IN MEDICAL SCHOOL,
10:27AM 18 THE WAY YOU MAKE A DIAGNOSIS IS YOU TAKE A HISTORY, YOU DO
10:27AM 19 A PHYSICAL EXAMINATION, AND THEN YOU DO LABORATORY TESTS.
10:27AM 20 A FORENSIC PATHOLOGIST WORKS THE SAME WAY. BUT OUR PATIENTS
10:27AM 21 OBVIOUSLY DON'T TALK TO US. SO WE GET THE HISTORY FROM POLICE,
10:27AM 22 FROM MEDICAL RECORDS, AND FROM OUR OWN INVESTIGATORS IF YOU
10:27AM 23 HAVE A MEDICAL EXAM SYSTEM. AND SO WHAT WE WANT TO KNOW IS
10:27AM 24 THE CIRCUMSTANCES LEADING UP TO AND SURROUNDING THE DEATH.

10:27AM 25 WE THEN DO THE AUTOPSY, THE EXTERNAL EXAMINATION

10:27AM 1 OF THE BODY, NOTE THE EXTENT OF THE INJURIES AND THE NATURE
10:27AM 2 OF THE INJURIES, IF THEY'RE PRESENT.

10:27AM 3 AND THEN THE THIRD THING WE'LL DO, AND IT DEPENDS ON
10:27AM 4 THE CASE, IS LABORATORY STUDIES SUCH AS TOXICOLOGY. OR IF
10:27AM 5 IT'S FIREARMS, IT MAY BE EXAMINATION OF FIREARMS AND SUCH.

10:27AM 6 AND THEN, BASED ON THIS MATERIAL, WE GIVE AN OPINION
10:27AM 7 AS TO THE CAUSE OF DEATH, WHAT KILLED THE PERSON, AND THE
10:28AM 8 MANNER HOW IT CAME ABOUT, WHETHER IT WAS ACCIDENT, NATURAL,
10:28AM 9 SUICIDE, OR WE CAN'T TELL, UNDETERMINED.

10:28AM 10 Q. OKAY.

10:28AM 11 AND BASED ON YOUR EXPERIENCE, SIMPLY LOOKING AT THE
10:28AM 12 PHYSICAL INJURIES OR THE MEDICAL EVIDENCE, IS IT UNCOMMON NOT
10:28AM 13 TO BE ABLE TO DETERMINE WHETHER SOMETHING WAS ACCIDENTAL OR
10:28AM 14 HOMICIDE SIMPLY LOOKING, AGAIN, JUST AT THE INJURIES
10:28AM 15 THEMSELVES?

10:28AM 16 A. YES. I MEAN, IN SOME CASES, THE CIRCUMSTANCES TELL YOU
10:28AM 17 THE CAUSE OF DEATH; IN OTHER CASES, IT'S THE LABORATORY TESTS.
10:28AM 18 THAT IS, IF YOU FIND SOMEBODY DEAD IN BED AND YOU DO AN AUTOPSY
10:28AM 19 AND YOU DON'T FIND ANYTHING, YOU DON'T HAVE A CAUSE OF DEATH
10:28AM 20 AND EVERYONE SAYS, "WELL, HE WAS HEALTHY." AND THEN YOU DO
10:28AM 21 THE TOXICOLOGY AND FIND OUT HE'S A DRUG OVERDOSE, THEN THE
10:28AM 22 DIAGNOSIS IS MADE ON THAT.

10:28AM 23 AND THEN OTHER TIMES IT'S THE CIRCUMSTANCES. YOU
10:28AM 24 KNOW, SOMEBODY IS FOUND FLOATING IN A LAKE AND, WELL, HE
10:28AM 25 DROWNED, BUT HOW DID HE GET THERE? AND SOMEONE SAYS, "OH,

10:29AM 1 HIS FRIEND PUSHED HIM OFF THE BOAT." WELL, THEN YOU'VE GOT A
10:29AM 2 HOMICIDE. OR "HE TRIPPED AND FELL OFF THE BOAT." THEN IT'S AN
10:29AM 3 ACCIDENT.

10:29AM 4 Q. THANK YOU, DR. DI MAIO.

10:29AM 5 CAN YOU TELL US WHAT OPINIONS YOU REACHED IN THIS
10:29AM 6 CASE?

10:29AM 7 A. ESSENTIALLY, MY OPINIONS WERE--IF YOU TAKE A LOOK AT
10:29AM 8 THE AUTOPSY--WELL, OKAY, BASICALLY, THAT THE YOUNG LADY HERE
10:29AM 9 DIED AS A RESULT OF MULTIPLE BLUNT-FORCE INJURIES. YOU CAN'T
10:29AM 10 MAKE A DIAGNOSIS OF STRANGULATION.

10:29AM 11 Q. TELL US WHY JUST QUICKLY.

10:29AM 12 A. PARDON.

10:29AM 13 Q. CAN YOU TELL US WHY, VERY QUICKLY?

10:29AM 14 A. QUICKLY? YOU DON'T HAVE THE SIGNS. I MEAN, YOU'VE
10:29AM 15 GOT SOME--SHE'S BEEN RUN OVER, SHE'S GOT A FEW PETECHIAE IN ONE
10:29AM 16 EYE. THAT'S NOT TYPICAL STRANGULATION. STRANGULATIONS HAVE
10:29AM 17 MULTIPLE PETECHIAE, IT'S GOING TO BE IN BOTH EYES, AND OFTEN
10:29AM 18 IN THE SKIN.

10:29AM 19 THE COURT: WHAT WORD ARE YOU USING THERE?

10:29AM 20 THE WITNESS: PETECHIAE. THAT MEANS SMALL PUNCTATE
10:29AM 21 HEMORRHAGES.

10:29AM 22 THE COURT: IT MEANS WHAT?

10:30AM 23 THE WITNESS: PETECHIAE ARE SMALL PUNCTATE
10:30AM 24 HEMORRHAGES.

10:30AM 25 THE COURT: HOW DO YOU SPELL PETECHIAE?

10:30AM 1 THE WITNESS: P-E-T-E-C-H-I-A-E.

10:30AM 2 THE COURT: AND THOSE ARE HEMORHAGES IN THE BLOOD
10:30AM 3 VESSELS IN THE EYE?

10:30AM 4 THE WITNESS: RIGHT. IT'S AS IF YOU TAKE A PIN AND
10:30AM 5 MAKE A DOT.

10:30AM 6 THE COURT: OKAY.

10:30AM 7 THE WITNESS: MULTIPLE DOTS. AND WHAT HAPPENS IS
10:30AM 8 THE BLOOD VESSELS IN THE EYE, IN THE WHITE OR UNDER THE EYELID
10:30AM 9 TOO, HAVE BLOWN OUT. AND SO YOU HAVE LITTLE HEMORHAGES ALONG
10:30AM 10 WHERE THE BLOOD VESSELS ARE.

10:30AM 11 THE COURT: OKAY. THAT WOULD BE A RESULT OF HOLDING
10:30AM 12 THE BLOOD VESSELS AROUND THE NECK TIGHT WHERE THE BLOOD STAYS
10:30AM 13 IN THE HEAD?

10:30AM 14 THE WITNESS: WELL, ACTUALLY, NO.

10:30AM 15 THE COURT: OH.

10:30AM 16 THE WITNESS: WHAT HAPPENS IS YOU GO TO STRANGLE
10:30AM 17 SOMEONE. OKAY. IT'S--THE BEST WAY TO THINK ABOUT IT, YOU
10:30AM 18 KNOW HOW TIRES BLOW OUT? YOU ARE BLOWING OUT THE BLOOD
10:30AM 19 VESSELS. AND WHAT HAPPENS IS, WHEN YOU GO TO STRANGLE SOMEONE,
10:30AM 20 YOU NEVER GET IT RIGHT. WHAT THEY'LL DO IS THEY'LL MOVE ABOUT.
10:30AM 21 AND SO YOU COMPRESS, THEN YOU LET GO, COMPRESS, YOU KNOW, AS
10:31AM 22 THEY ARE MOVING ABOUT. AND SO YOU ARE GETTING PULSATATIONS OF
10:31AM 23 THE BLOOD. AND THE PULSATATIONS LITERALLY BLOW OUT THE BLOOD
10:31AM 24 VESSEL. JUST LIKE IF YOU PUT IN TOO MUCH AIR, YOU BLOW OUT A
10:31AM 25 TIRE. AND SO, ACTUALLY, LIKE IF YOU SMOTHER SOMEONE WITH A

10:31AM 1 PILLOW, THERE ARE NO PETECHIAE EVEN THOUGH THEY'VE ASPHYXIATED.
10:31AM 2 BUT WITH A STRANGULATION, YOU BLOW OUT VESSELS. AND IN THIS
10:31AM 3 CASE, THERE'S ONE EYE--AND THERE'S A FEW PETECHIAE, BUT THIS
10:31AM 4 PERSON HAS BEEN RUN OVER, THEIR CHEST HAS BEEN COMPRESSED,
10:31AM 5 THEIR BRAIN HAS BEEN SQUASHED, AND SO YOU SEE A FEW PETECHIAE.
10:31AM 6 YOU CAN'T MAKE THE DIAGNOSIS. THERE'S HEMORRHAGE OF THE NECK,
10:31AM 7 BUT THERE ARE INJURIES THERE. SO THERE'S NO WAY I COULD MAKE
10:31AM 8 THE DIAGNOSIS THAT THE PERSON HAS BEEN STRANGLED BASED ON THE
10:31AM 9 PHYSICAL EVIDENCE.

10:31AM 10 THE COURT: OKAY.

10:31AM 11 MS. MIRANDA:

10:31AM 12 Q. LET'S MOVE ON AND TALK ABOUT THE BLUNT-FORCE INJURIES
10:31AM 13 AND THE RUNOVER. YOUR SECOND OPINION IS THAT SHE WAS RUN OVER.
10:31AM 14 CAN YOU TELL US WHY YOU CAME TO THAT OPINION?

10:31AM 15 A. OKAY. IF YOU LOOK AT THE HEAD, THERE ARE MULTIPLE
10:32AM 16 FRACTURES OF THE SKULL, THEY'RE ON THE BASE OF THE SKULL, ON
10:32AM 17 THE TOP OF THE SKULL; THERE ARE FACIAL FRACTURES; AND THE BONES
10:32AM 18 WERE MOVABLE, IF YOU READ THE AUTOPSY.

10:32AM 19 AND THEN THE BRAIN ITSELF IS NOT HEMORRHAGIC SO MUCH
10:32AM 20 AS TORN UP. PARTS OF THE BRAIN ARE LITERALLY TORN APART. AND
10:32AM 21 WHERE THE BRAIN STEM CONNECTS TO THE SPINAL COLUMN, IT'S ALSO
10:32AM 22 TORN.

10:32AM 23 AND THERE'S ALSO A FRACTURE OF THE NECK.

10:32AM 24 WELL, THESE ARE THE TYPE OF INJURIES YOU GET WHEN
10:32AM 25 THE HEAD IS SQUASHED.

10:32AM 1 IF YOU GO OUT, LET'S SAY, A VEHICLE OR YOU FALL OFF
10:32AM 2 A BUILDING AND YOU LAND ON YOUR HEAD, YOU'LL GET A FRACTURE OR
10:32AM 3 TWO AND YOU'LL GET BLEEDING ON THE BRAIN, YOU MAY GET A LITTLE
10:32AM 4 LACERATION. BUT THERE ARE TOO MANY LACERATIONS AND THERE ARE
10:33AM 5 TOO MANY FRACTURES. SO THIS HAD TO HAVE BEEN, BASED ON THE
10:33AM 6 CIRCUMSTANCES, A TIRE GOING OVER. MAY HAVE HIT THE GROUND
10:33AM 7 AND GOT A HEAD INJURY, BUT ALSO THE TIRE HAD TO GO OVER.

10:33AM 8 AND THEN WE GO TO THE CHEST. YOU'VE GOT RIB
10:33AM 9 FRACTURES IN THE FRONT, YOU'VE GOT FRACTURES IN THE BACK,
10:33AM 10 YOU'VE GOT TWO OF THE CHAMBERS OF THE HEART BLOWN OUT, YOU'VE
10:33AM 11 GOT THE AORTA--MAJOR BLOOD VESSEL COMING IN THE HEART--
10:33AM 12 TRANSECTED, YOU'VE GOT LACERATIONS OF THE ONE LUNG, AND THE
10:33AM 13 OTHER THE VESSELS HAVE BEEN KIND OF TORN FROM THE ATTACHMENTS
10:33AM 14 TO THE LUNG, AND THEN YOU'VE GOT INJURIES TO THE LIVER AS WELL.

10:33AM 15 AND WITH THIS TYPE OF EXTENSIVE INJURY, AGAIN, THESE
10:33AM 16 ARE BURSTING-TYPE INJURIES, IF YOU COMPRESS THE HEART HARD
10:34AM 17 ENOUGH THAT THE BLOOD IS JUST COMPACTED, IT WILL BLOW OUT.
10:34AM 18 AND WHERE IT BLOWS OUT IS AT WHAT'S CALLED THE AURICULAR
10:34AM 19 APPENDAGES, THE ATRIUM OF THE HEART, BECAUSE THAT'S THE
10:34AM 20 THINNEST AREA OF THE HEART.

10:34AM 21 AND THEN COMPRESSION OF THE CHEST ALSO PRODUCES A
10:34AM 22 LACERATION OF THE AORTA. IT'S MOST COMMONLY SEEN WHEN YOU HIT
10:34AM 23 THE STEERING WHEEL BEFORE THEY HAD AIRBAGS. BUT IT'S THE SAME
10:34AM 24 PHENOMENA. IF YOU HAVE VIOLENT COMPRESSION OF THE CHEST, YOU
10:34AM 25 RUPTURE THE AORTA BECAUSE THE BLOOD IS COMPRESSED AND IT JUST

10:34AM 1 BLOWS IT OUT.

10:34AM 2 AND THEN YOU HAVE, YOU KNOW, THE INJURIES TO THE
10:34AM 3 LUNG AND THEN LIVER FRACTURES IN THE FRONT AND THE BACK. THIS
10:34AM 4 IS AGAIN SOMETHING HAS GONE OVER THE CHEST AND COMPRESSED,
10:34AM 5 AND IT'S TYPICAL OF SOMEBODY WHO HAS HAD A--BEEN RUN OVER
10:34AM 6 BY A VEHICLE.

10:34AM 7 IF YOU GET EJECTED FROM A CAR OR YOU JUMP OR YOU
10:34AM 8 ARE PUSHED OR WHATEVER, YOU TYPICALLY GET MAYBE A LITTLE HEAD
10:35AM 9 INJURY, COMMONLY A BROKEN NECK, BUT WHAT HAPPENS IS YOU GO
10:35AM 10 TUMBLING. IF YOU'VE EVER SEEN ANYONE THROW SOMETHING OUT OF
10:35AM 11 A CAR, IT GOES TUMBLING ACROSS THE HIGHWAY AND THAT'S HOW IT
10:35AM 12 DISSIPATES ITS FORCE. AND THAT'S WHAT HAPPENS IF A PERSON
10:35AM 13 GOES OUT, THEY TUMBLE, AND SO THEY GENERALLY TEND NOT TO GET
10:35AM 14 TOO MANY INJURIES BELOW THE NECK. AND IF THEY DO, THEY'RE
10:35AM 15 RELATIVELY MINOR.

10:35AM 16 THE THIRD THING YOU KNOW THAT A TIRE WENT OVER IT
10:35AM 17 IS WHEN YOU LOOK ONE OF THE LEGS. ON THE LEG, THERE IS A TEAR
10:35AM 18 ALMOST COMPLETELY AROUND ONE OF THE LEGS. AND THIS IS DUE TO
10:35AM 19 A TIRE PASSING OVER. AND WHAT HAPPENS IS, AS THE TIRE GOES
10:35AM 20 OVER THE LEG, OR IT COULD HAPPEN IN THE ARM TOO, IT PINS THAT
10:35AM 21 EXTREMITY TO THE GROUND, BUT THE TIRE IS STILL TURNING, SO
10:35AM 22 IT GRIPS THE FLESH. AND SO, EVEN THOUGH IT'S PINNING THE BONE
10:36AM 23 DOWN, IT STARTS TO TURN, GRIPS THE FLESH AND TEARS IT SO THAT
10:36AM 24 THERE'S A TEAR STRAIGHT ACROSS. THIS IS VERY CHARACTERISTIC
10:36AM 25 OF TIRES GOING OVER THE LIMB, PINNING IT AND TEARING IT. SO

10:36AM 1 YOU GET A TEAR. SO, JUST LOOKING AT THE TEAR, YOU KNOW THAT'S
10:36AM 2 A TIRE GOING OVER.

10:36AM 3 THE MASSIVE INJURIES TO THE HEAD AND CHEST ARE
10:36AM 4 EXPLAINABLE. SO WHAT YOU HAVE IS SOMEONE WHO DIED AS A RESULT
10:36AM 5 OF MASSIVE TRAUMA TO THE HEAD AND CHEST. AND THE ONLY WAY YOU
10:36AM 6 COULD HAVE GOT IT IS A TIRE GOING OVER.

10:36AM 7 Q. OKAY. LET ME ASK YOU. YOU SAID YOU REVIEWED, AS PART
10:36AM 8 OF YOUR PREPARATION, DR. LARKIN'S REPORT.

10:36AM 9 A. YES, MA'AM.

10:36AM 10 Q. OKAY. DO YOU RECALL SEEING IN HIS REPORT THAT HE SAID
10:36AM 11 THAT THERE WERE NO INTERNAL OR DEEP INJURIES UNDERNEATH THE
10:36AM 12 SKIN THAT ARE CONSISTENT WITH BEING RUN OVER?

10:36AM 13 A. WELL, I'D HAVE TO DISAGREE WITH THAT.

10:37AM 14 Q. THAT WAS MY QUESTION, WHETHER YOU AGREED WITH THAT.

10:37AM 15 OKAY. MOVING ON, I WANT TO TALK A LITTLE BIT
10:37AM 16 ABOUT THAT LEG WOUND YOU WERE JUST TELLING US ABOUT WITH
10:37AM 17 THE TIRE WOUND.

10:37AM 18 A. RIGHT.

10:37AM 19 Q. NOW, IN MR. LARKIN'S REPORT, HE OPINED THAT THAT INJURY
10:37AM 20 CAME FROM MS. GEORGE CATCHING HER LEG UNDER THE SEAT CARRIAGE
10:37AM 21 AS SHE VOLUNTARILY JUMPED FROM THE TRUCK. CAN YOU TELL US, IN
10:37AM 22 YOUR OPINION, WHAT IS WRONG WITH THAT?

10:37AM 23 A. WELL, THE THING IS IT WOULD BE MORE OF A RIPPING INJURY
10:37AM 24 GOING DOWN THE LEG. THIS ONE GOES AROUND. OKAY? ON TOP OF
10:37AM 25 WHICH YOU WOULD HAVE HAD A LOT OF BLOOD IN THE TRUCK. IT'S MY

10:37AM 1 UNDERSTANDING THERE WASN'T THAT MUCH. AND IF YOU DON'T HAVE
10:37AM 2 IT, THIS IS A TYPICAL TIRE OVER AN EXTREMITY. AND YOU SEE--I'M
10:37AM 3 NOT GONNA SAY YOU SEE IT ALL THE TIME, BUT WHEN PEOPLE GET RUN
10:37AM 4 OVER ON THE LEGS, EVEN THE ARMS OCCASIONALLY, YOU'LL SEE THIS
10:37AM 5 IS VERY TYPICAL, PRESSING DOWN AND THEN TEARING. THE TIRE RIPS
10:38AM 6 THE SKIN AND MUSCLE AND JUST TEARS IT. AND IT WILL TEAR IT IN
10:38AM 7 A LINEAR FASHION BECAUSE IT'S PINNING AND THEN RIPPING.

10:38AM 8 Q. OKAY. THANK YOU.

10:38AM 9 AND THEN, IF YOU REMEMBER, THIS INJURY THAT WAS ON
10:38AM 10 HER LEG, WAS IT CLOSER TO THE ANKLE OR CLOSER TO THE KNEE?

10:38AM 11 A. I HAVE TO ACTUALLY SAY I DON'T REMEMBER.

10:38AM 12 Q. I CAN PUT A PICTURE UP, IF THAT WOULD BE HELPFUL.

10:38AM 13 A. YES, YES.

10:38AM 14 MS. MIRANDA: OKAY. ONE SECOND.

10:39AM 15 AND IF I MAY, YOUR HONOR, BEFORE I PUT THIS UP, I'D
10:39AM 16 LIKE TO MARK THIS AS RESPONDENT'S EXHIBIT 1.

10:39AM 17 THE COURT: ALL RIGHT.

10:39AM 18 MS. MIRANDA: I BELIEVE I'VE ALREADY PROVIDED
10:39AM 19 COUNSEL WITH A COPY OF THIS. FOR THE RECORD, THIS IS A PACKET
10:39AM 20 OF THE PHOTOGRAPHS THAT WERE PROVIDED TO OUR EXPERT FOR HIS
10:39AM 21 REVIEW.

10:39AM 22 THE COURT: OKAY. I DON'T KNOW IF I NEED TO SAY
10:39AM 23 THIS, BUT RESPONDENT'S EXHIBIT 1 IS ADMITTED.

10:39AM 24 MS. MIRANDA: THANK YOU.

10:39AM 25 Q. LOOKING AT THAT INJURY, DOES THAT HELP?

10:39AM 1 A. YES. THAT LOOKS LIKE IT'S JUST BELOW THE KNEE.

10:39AM 2 THERE IS ANOTHER PHOTOGRAPH. THERE'S A P.A. NUMBER.

10:39AM 3 I DON'T KNOW IF THAT--

10:39AM 4 Q. YEAH, THAT WOULD BE THE RIGHT NUMBER.

10:39AM 5 A. IT'S 280406.

10:39AM 6 Q. 406.

10:39AM 7 A. AND IF YOU LOOK AT THAT, YOU CAN SEE IT'S ALMOST LIKE

10:40AM 8 A KNIFE HAS CUT IT. WHAT'S HAPPENED IS THE TIRE GRABBED THE

10:40AM 9 LOWER PART OF THAT SKIN. AND YOU CAN SEE THERE'S SOME SCRAPE.

10:40AM 10 BECAUSE WHAT THE TIRE DID IS IT GRABBED THAT, AND IT TURNED THE

10:40AM 11 SKIN AND MUSCLE, AND IT SCRAPED ACROSS THE GROUND, AND IT JUST

10:40AM 12 TORE IT RIGHT ACROSS. YOU KNOW, SO THAT'S WHERE THE TIRE WENT

10:40AM 13 ACROSS.

10:40AM 14 Q. OKAY. AND YOU MENTIONED EARLIER THAT THIS TYPE OF

10:40AM 15 WOUND WOULD HAVE LEFT BLOOD IN THE TRUCK. WOULD YOU CATEGORIZE

10:40AM 16 THIS AS A SEVERE LACERATION?

10:40AM 17 A. OH, YEAH, YOU CAN SEE THAT'S MUSCLE. I MEAN, IT'S ALL

10:40AM 18 THE WAY DOWN TO THE MUSCLE, YOU KNOW, AND IT'S, I THINK, ALMOST

10:40AM 19 COMPLETELY AROUND THE LEG.

10:40AM 20 THE COURT: I'M SORRY. MS. MIRANDA, YOU SAID THIS

10:40AM 21 TYPE OF WOUND WOULD HAVE LEFT BLOOD IN THE TRUCK?

10:40AM 22 MS. MIRANDA: I APOLOGIZE. IF IT HAD OCCURRED

10:41AM 23 AS MR. LARKIN ALLEGED, INSIDE THE TRUCK. I CAN REPHRASE

10:41AM 24 THE QUESTION SO THE RECORD IS CLEAR.

10:41AM 25 THE COURT: ALL RIGHT. DR. LARKIN SAYS THAT THIS

10:41AM 1 TEAR TO HER LEG OCCURRED INSIDE THE TRUCK?

10:41AM 2 MS. MIRANDA: YES, YOUR HONOR.

10:41AM 3 THE COURT: OKAY.

10:41AM 4 MR. ELLIS: YOUR HONOR, I'M NOT SURE THAT--I THINK
10:41AM 5 THAT'S MISSTATING DR. LARKIN'S--

10:41AM 6 THE COURT: YOU'VE GOT TO KEEP YOUR VOICE UP,
10:41AM 7 MR. ELLIS.

10:41AM 8 WHY WOULD DR. LARKIN SAY THAT THE TEAR TO HER LEG
10:41AM 9 OCCURRED INSIDE THE TRUCK?

10:41AM 10 MS. MIRANDA: I'M NOT SURE. BUT HE CLAIMS THAT SHE
10:41AM 11 GOT HER LEG STUCK UNDER THE SEAT AS SHE WAS JUMPING, AND THAT
10:41AM 12 IT WAS RIPPED BY THE SEAT--THE UNDERNEATH-THE-SEAT CARRIAGE.

10:41AM 13 THE COURT: AND WAS BLOOD IN THE TRUCK?

10:41AM 14 MS. MIRANDA: NO, YOUR HONOR. THAT'S ONE OF THE
10:41AM 15 WITNESSES THAT WE HAVE COMING TO TESTIFY.

10:41AM 16 MR. ELLIS: IN THAT CASE, YOUR HONOR, I WOULD OBJECT.
10:41AM 17 IT MISSTATES THE EVIDENCE IN DR. LARKIN'S REPORT. HE NEVER
10:41AM 18 SAID THAT.

10:41AM 19 THE COURT: OKAY. I'LL HAVE TO SEE HIS REPORT.
10:42AM 20 I MEAN, I'LL LET YOU GO AHEAD AND GO FORWARD, BUT...

10:42AM 21 MS. MIRANDA: CAN I HAVE JUST A MOMENT, YOUR HONOR,
10:42AM 22 TO LOOK THROUGH MR. LARKIN'S REPORT?

10:42AM 23 THE COURT: YES.

10:42AM 24 MS. MIRANDA: I WASN'T INTENDING TO DO THIS, BECAUSE
10:42AM 25 WE WERE ANTICIPATING THAT MR. LARKIN WAS GOING TO TESTIFY

10:42AM 1 FIRST.

10:42AM 2 THE COURT: IS GLENN LARKIN AN M.D. OR A PH.D.?

10:42AM 3 MS. MIRANDA: I BELIEVE HE'S AN M.D.

10:42AM 4 MR. ELLIS: HE IS AN M.D.

10:42AM 5 THE COURT: OKAY. SO IT'S DR. LARKIN?

10:42AM 6 MS. MIRANDA: IT'S DR. LARKIN. I APOLOGIZE.

10:42AM 7 DR. LARKIN, YES. AND I WASN'T ANTICIPATING INTRODUCING HIS
10:42AM 8 REPORT, BECAUSE OUR ANTICIPATION WAS THAT HIS TESTIMONY WOULD
10:43AM 9 BE IN EVIDENCE BEFORE THAT. BUT IF I MAY HAVE SOME LATITUDE
10:43AM 10 AND APPROACH THE WITNESS WITH A COPY OF HIS REPORT TO SHOW IT
10:43AM 11 TO THE WITNESS.

10:43AM 12 THE COURT: ALL RIGHT. OKAY.

10:43AM 13 MS. MIRANDA: THANK YOU.

10:43AM 14 THE WITNESS: I HAVE A COPY.

10:43AM 15 MS. MIRANDA: OH, YOU DO? GREAT. THANKS,
10:43AM 16 DR. DI MAIO.

10:43AM 17 Q. IF YOU COULD TURN TO PAGE WHAT IS MARKED AS 19 OF 23--

10:43AM 18 THE COURT: NOW, BEFORE WE GO ANY FURTHER, WE'LL
10:43AM 19 DESIGNATE THIS PHOTOGRAPH--AND YOU'LL HAVE TO GIVE COPIES
10:43AM 20 OF THESE TO MS. BATES, THE CLERK. THIS PHOTOGRAPH WILL BE
10:43AM 21 RESPONDENT'S EXHIBIT 2.

10:43AM 22 MS. MIRANDA: YES, YOUR HONOR. OR, ALTERNATIVELY,
10:43AM 23 WE HAVE A PACKET OF PHOTOGRAPHS THAT ARE NUMBERED THAT WE COULD
10:43AM 24 JUST SIMPLY MARK AND THEN REFER TO THE NUMBERS FOR THE RECORD.

10:43AM 25 THE COURT: OKAY. SO THEN RESPONDENT'S EXHIBIT 1

10:43AM 1 ARE PHOTOS, PLURAL, OF MS. GEORGE'S BODY?

10:43AM 2 MS. MIRANDA: YEAH, THEY'RE CRIME-SCENE PHOTOS AND
10:43AM 3 AUTOPSY PHOTOS, YES.

10:43AM 4 THE COURT: OKAY.

10:43AM 5 MS. MIRANDA:

10:43AM 6 Q. DR. DI MAIO, IF I COULD DRAW YOUR ATTENTION ON PAGE 19
10:44AM 7 OF 23 TO WHAT DR. LARKIN HAS DESIGNATED AS NUMBERS 5.1 AND 5.2,
10:44AM 8 CAN YOU TELL US WHAT THOSE SAY?

10:44AM 9 A. DO YOU WANT ME TO READ THEM?

10:44AM 10 Q. YES, PLEASE.

10:44AM 11 A. OKAY. "5.1. WHILE SITTING ON A BENCH SEAT IN ACKER'S
10:44AM 12 TRUCK, GEORGE PUSHED OFF WITH THE LEFT HAND AND LEFT FOOT,
10:44AM 13 PIVOTING TOWARDS THE RIGHT.

10:44AM 14 "5.2. HER RIGHT LEG, TRAPPED UNDER THE SEAT, FLEXED
10:44AM 15 AND ROTATED INTO NEARLY TOTALLY CIRCUMFERENTIAL LACERATION DEEP
10:44AM 16 TO THE DEEP FASCIA AND EXPOSING THE MUSCLES OF THE POPLITEUM
10:44AM 17 SPACE (PHOTOGRAPH)."

10:45AM 18 Q. OKAY. NOW, I WANT TO APOLOGIZE TO DR. LARKIN, WHO IS
10:45AM 19 NOT HERE, BECAUSE I'M NOT A MEDICAL EXPERT. SO I'M GOING TO
10:45AM 20 ASK YOU: AS ONE EXPERT TO ANOTHER, WHEN YOU READ THAT, WHAT
10:45AM 21 DOES THAT SAY TO YOU HE IS ASSERTING THERE?

10:45AM 22 A. HE'S SAYING THAT THE LEG'S TRAPPED UNDER THE SEAT AND,
10:45AM 23 AS HER BODY ROTATES, IT RIPS, THERE'S A LACERATION, BECAUSE
10:45AM 24 IT'S BEING HELD BY THE SEAT. SO...

10:45AM 25 Q. SO, AS YOU INTERPRET--AS YOU INTERPRET THAT, HE'S

10:45AM 1 ALLEGING THAT IT HAPPENED INSIDE THE TRUCK. CORRECT?

10:45AM 2 A. [MOVING HEAD UP AND DOWN]

10:45AM 3 Q. THANK YOU. WOULD THAT TYPE OF WOUND ALSO LEAVE BEHIND
10:45AM 4 ANY TISSUE?

10:45AM 5 A. IF IT'S--IT MIGHT OR IT MIGHT NOT. YOU CAN'T SAY FOR
10:45AM 6 SURE.

10:45AM 7 Q. SURE.

10:45AM 8 A. YOU ARE TEARING MAJOR BLOOD VESSELS DOWN THERE, SO YOU
10:46AM 9 WOULD SEE BLOOD.

10:46AM 10 Q. OKAY.

10:46AM 11 NEXT, I WANT TO TURN TO WHAT DR. LARKIN REFERS TO IN
10:46AM 12 HIS REPORT AS A PLAUSIBLE ALTERNATIVE SCENARIO, WHICH INCLUDES
10:46AM 13 THE PORTION THAT YOU JUST READ.

10:46AM 14 MR. ELLIS: OBJECTION. THAT MISSTATES--WHAT HE JUST
10:46AM 15 READ WAS THE PLAUSIBLE ALTERNATIVE SCENARIO.

10:46AM 16 MS. MIRANDA: THAT'S WHAT I JUST SAID, THAT WAS PART
10:46AM 17 OF IT.

10:46AM 18 MR. ELLIS: THAT INCLUDES WHAT WAS JUST REFERRED TO
10:46AM 19 AS THE--

10:46AM 20 MS. MIRANDA: I BELIEVE THAT'S WHAT I SAID, THAT
10:46AM 21 WHAT HE JUST READ WAS PART OF THE PLAUSIBLE ALTERNATIVE
10:46AM 22 SCENARIO.

10:46AM 23 THE COURT: OKAY. GO AHEAD.

10:46AM 24 MS. MIRANDA: OKAY.

10:46AM 25 Q. NOW, DR. DI MAIO, DR. LARKIN PROPOSES A PLAUSIBLE

10:46AM 1 ALTERNATIVE SCENARIO IN WHICH HE ULTIMATELY CONCLUDES THAT
10:46AM 2 MS. GEORGE VOLUNTARILY JUMPED FROM THE TRUCK AND THUS SUSTAINED
10:46AM 3 THE INJURIES THAT WE SEE IN THE AUTOPSY REPORT. CAN YOU TELL
10:47AM 4 US YOUR OPINION OF THAT OPINION?

10:47AM 5 A. YOU CAN'T MAKE THAT OPINION. THE PROBLEM IS THE
10:47AM 6 INJURIES THAT YOU'VE GOT ARE CONSISTENT WITH SOMEONE BEING
10:47AM 7 RUN OVER. OKAY?

10:47AM 8 NOW, IF YOU ASSUME THAT THE INDIVIDUAL WENT OUT
10:47AM 9 THE TRUCK WHILE THE TRUCK WAS MOVING, YOU CAN'T TELL FROM THE
10:47AM 10 INJURIES WHETHER THE PERSON WAS PUSHED OR JUMPED. YOU DON'T
10:47AM 11 KNOW WHETHER THE TRUCK IS GOING STRAIGHT OR VEERING TO THE
10:47AM 12 LEFT OR RIGHT; YOU DON'T KNOW IF SHE--SAY SHE DIDN'T JUMP, SHE
10:47AM 13 ACCIDENTALLY FELL, THE CENTRIFUGAL FORCE PUSHED HER AGAINST
10:47AM 14 THE DOOR AND SOMEHOW IT POPPED OPEN AND SHE FELL OUT; YOU DON'T
10:47AM 15 KNOW IF SHE WENT OUT FACE-FORWARD OR BACK OR SIDEWAYS; YOU
10:47AM 16 DON'T KNOW IF SHE TRIED TO STOP BY GRABBING ON TO SOMETHING, A
10:47AM 17 BELT OR MR. ACKER; YOU DON'T KNOW IF SHE WAS PUSHED. AND THEN,
10:48AM 18 IF SHE WAS PUSHED, WHEN SHE WENT OUT, DID SHE TRY TO HOLD ON TO
10:48AM 19 SOMETHING TO BREAK HERSELF FROM GOING OUT? YOU HAVE ALL THESE
10:48AM 20 VARIABLES.

10:48AM 21 ALL THAT YOU CAN SAY IS THAT THIS IS AN INDIVIDUAL
10:48AM 22 WHO HAS BEEN RUN OVER BY A TRUCK AND THAT'S ABOUT IT. YOU
10:48AM 23 CANNOT SAY WHETHER SHE JUMPED OUT OR WAS PUSHED OUT. MEDICALLY,
10:48AM 24 THERE'S JUST NO WAY TO SAY FROM THE EVIDENCE. IT'S JUST TOO--
10:48AM 25 TOO MANY VARIABLES AND YOU CAN'T SAY. IT'S JUST TOO MANY

10:48AM 1
10:48AM 2
10:48AM 3
10:48AM 4
10:48AM 5
10:48AM 6
10:48AM 7
10:48AM 8
10:49AM 9
10:49AM 10
10:49AM 11
10:49AM 12
10:49AM 13
10:49AM 14
10:49AM 15
10:49AM 16
10:49AM 17
10:49AM 18
10:49AM 19
10:49AM 20
10:49AM 21
10:50AM 22
10:50AM 23
10:50AM 24
10:50AM 25

VARIABLES.

MS. MIRANDA: I'LL PASS THE WITNESS, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. ELLIS.

CROSS-EXAMINATION OF VINCENT J.M. DI MAIO ON BEHALF OF THE
PETITIONER

MR. ELLIS:

Q. DR. DI MAIO, ON BEHALF OF YOUR CONSULTING WORK IN THIS
CASE, YOU WROTE A LETTER TO MS. MIRANDA, IS THAT CORRECT?

A. YES. YES, SIR.

MR. ELLIS: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES.

THE WITNESS: I HAVE A COPY.

MR. ELLIS:

Q. AND WHAT I PUT THERE UP ON THE SCREEN, IS THIS THE
LETTER THAT YOU WROTE TO HER?

A. YES, MA'AM. YES, SIR.

Q. AND IS THIS YOUR SIGNATURE ON PAGE 2?

A. YES, SIR.

MR. ELLIS: YOUR HONOR, WE WOULD ASK THAT THIS BE
ADMITTED AS PETITIONER'S EXHIBIT 2.

THE COURT: OKAY. PETITIONER'S EXHIBIT 2 IS
ADMITTED.

MS. MIRANDA: NO OBJECTION.

MR. ELLIS:

10:50AM 1 Q. NOW, DR. DI MAIO, YOU BASICALLY TOLD US, I GUESS YOU
10:50AM 2 COULD SAY, IN THAT LETTER THAT YOU BASICALLY DISAGREE WITH
10:50AM 3 DR. GONSOULIN'S CONCLUSION THAT THE VICTIM WAS STRANGLED, IS
10:50AM 4 THAT CORRECT?

10:50AM 5 A. OH, YEAH. I COULDN'T MAKE THE DIAGNOSIS.

10:50AM 6 Q. AND YOU ARE AWARE THAT--OR ARE YOU AWARE THAT BASICALLY
10:50AM 7 HER TESTIMONY AT TRIAL WAS THAT MS. GEORGE WAS STRANGLED TO
10:50AM 8 DEATH? IS THAT CORRECT?

10:50AM 9 A. YES, SIR.

10:51AM 10 Q. AND THEN, AFTER DEATH, THE BLUNT-FORCE INJURIES
10:51AM 11 OCCURRED, IS THAT CORRECT?

10:51AM 12 A. YES, SIR.

10:51AM 13 Q. AND DO YOU FIND IT SIGNIFICANT THAT MS. GONSOULIN,
10:51AM 14 AT THE TIME SHE DID THE AUTOPSY, HAD ONLY JUST FINISHED HER
10:51AM 15 RESIDENCY?

10:51AM 16 MS. MIRANDA: YOUR HONOR, AT THIS POINT I'M GOING
10:51AM 17 TO OBJECT TO THE RELEVANCE THAT THIS HAS TO THIS HEARING.

10:51AM 18 MR. ELLIS: YOUR HONOR, IT GOES TO THE CENTER--
10:51AM 19 THE HEART OF THE HEARING, I THINK, THE CREDIBILITY OF
10:51AM 20 DR. GONSOULIN'S TESTIMONY AT THE TRIAL.

10:51AM 21 THE COURT: WELL, BUT BOTH SIDES AGREE THAT SHE WAS
10:51AM 22 WRONG, THAT STRANGULATION WASN'T THE CAUSE OF DEATH.

10:51AM 23 MR. ELLIS: OKAY.

10:51AM 24 THE COURT: SO I DON'T NEED--I MEAN, I'LL ASSUME
10:51AM 25 THAT STRANGULATION WAS NOT THE CAUSE OF DEATH, SINCE YOU BOTH

10:51AM 1 AGREE IT WAS NOT.

10:51AM 2 MR. ELLIS: OKAY.

10:51AM 3 MS. MIRANDA: AND WE'VE STIPULATED TO THAT FACT,
10:51AM 4 YOUR HONOR.

10:52AM 5 THE COURT: OKAY. ALL RIGHT.

10:52AM 6 MR. ELLIS:

10:52AM 7 Q. NOW, DR. DI MAIO, GOING BACK TO WHAT COUNSEL WAS ASKING
10:52AM 8 YOU ABOUT ON PAGE 19 OF DR. LARKIN'S REPORT, DO YOU HAVE THAT
10:52AM 9 IN FRONT OF YOU?

10:52AM 10 A. YES, SIR, I DO.

10:52AM 11 Q. AND JUST TO CLARIFY HERE, THE LEG INJURIES THAT HE'S
10:52AM 12 REFERRING TO, THIS--THE HEADLINE THAT HE PRESENTS THIS UNDER
10:52AM 13 IS "A PLAUSIBLE ALTERNATIVE SCENARIO," IS THAT CORRECT?

10:52AM 14 A. OH, YES, YES.

10:52AM 15 Q. AND WOULD YOU SAY THAT THE GIST OF HIS REPORT WAS
10:52AM 16 THAT THERE WAS NO STRANGULATION? IS THAT A FAIR SUMMARY OF
10:52AM 17 DR. LARKIN'S REPORT?

10:52AM 18 A. THAT'S--YEAH. WELL, THERE'S TWO POINTS IN THE--IN
10:52AM 19 HIS REPORT:

10:52AM 20 ONE, THAT SHE'S NOT STRANGLED. AND I AGREE
10:52AM 21 COMPLETELY.

10:52AM 22 AND THE OTHER ONE WAS THAT THE INJURIES ARE THOSE
10:52AM 23 OF SOMEONE WHO JUMPED OUT OF A VEHICLE. AND THAT I DISAGREE
10:53AM 24 BY SAYING THAT YOU CAN'T TELL. THERE'S JUST TOO MANY
10:53AM 25 VARIABILITIES, TOO MANY THINGS YOU DON'T KNOW. AND IT'S NOT

10:53AM 1 GONNA LOOK THAT MUCH DIFFERENT WHETHER YOU JUMP OR SOMEBODY
10:53AM 2 PUSHED. SO I CAN'T SAY WHETHER--EITHER ONE.

10:53AM 3 Q. WELL, IN OTHER WORDS, DR. LARKIN'S REPORT, YOU WOULD
10:53AM 4 BASICALLY AGREE WITH IT, EVEN THOUGH YOU MAY NOT AGREE WITH
10:53AM 5 ALL THE DETAILS OF HIS PLAUSIBLE ALTERNATIVE SCENARIO, IS THAT
10:53AM 6 CORRECT?

10:53AM 7 A. WELL, YEAH, I DISAGREE THAT YOU CAN TELL THAT SHE
10:53AM 8 JUMPED VERSUS THAT SHE WAS PUSHED.

10:53AM 9 Q. OKAY. YOU DIDN'T DO ANY TESTS IN THE TRUCK ITSELF,
10:53AM 10 THEN, DID YOU?

10:53AM 11 A. NO, OBVIOUSLY.

10:53AM 12 Q. DO YOU KNOW HOW WIDE THE TRUCK WAS OR--

10:53AM 13 A. [MOVING HEAD SIDE TO SIDE]

10:53AM 14 Q. WOULD IT MAKE ANY DIFFERENCE FOR YOU TO HAVE KNOWN
10:53AM 15 THAT THIS PARTICULAR VICTIM JUMPED FROM THIS PARTICULAR--OR
10:54AM 16 ATTEMPTED TO JUMP FROM THIS PARTICULAR TRUCK IN THE PAST?
10:54AM 17 WOULD THAT HAVE A BEARING ON THE AUTOPSY?

10:54AM 18 A. NO, SIR. BECAUSE WHAT I'M SAYING IS THIS: THAT YOU
10:54AM 19 CANNOT LOOK AT THE INJURIES AND SAY WHETHER A PERSON HAD BEEN
10:54AM 20 PUSHED OR JUMPED. THEY'RE JUST VANILLA. I MEAN, THEY'RE THE
10:54AM 21 TYPE OF INJURIES THAT YOU GET WHETHER YOU JUMPED OR YOU WERE
10:54AM 22 PUSHED. YOU CAN'T TELL FROM THE INJURIES THEMSELVES.

10:54AM 23 Q. NOW, DR. DI MAIO, WHAT IS A PONTO-MEDULLARY RENT?
10:54AM 24 P-O-N-T-O M-E-D-U-L-L-A-R-Y RENT.

10:54AM 25 A. THE BRAIN IS CONNECTED TO THE SPINAL CORD BY WHAT'S

10:55AM 1 CALLED THE BRAIN STEM. AND THIS IS WHAT--WHAT THAT'S SAYING
10:55AM 2 IS THERE'S A TEAR OF THE BRAIN STEM AT THE PONTINE-MEDULLARY
10:55AM 3 JUNCTION. THAT IS WHERE THE PONS MEETS THE MEDULLA, WHICH ARE
10:55AM 4 BOTH PART OF THE BRAIN STEM. AND THAT HAS BEEN TORN. THAT'S
10:55AM 5 WHAT IT MEANS.

10:55AM 6 Q. AND WOULD YOU SAY THAT THIS WAS PROBABLY THE MAIN CAUSE
10:55AM 7 OF DEATH?

10:55AM 8 A. I'D SAY THE BRAIN INJURIES, PER SE, WERE THE MAIN CAUSE
10:55AM 9 OF DEATH. I MEAN, THERE WERE MASSIVE BRAIN INJURIES. THE
10:55AM 10 BRAIN WAS SHREDDED IN AREAS. THE HEAD INJURY, I MEAN, I--
10:55AM 11 OKAY. WILL IT KILL IMMEDIATELY? THE ANSWER IS: USUALLY.
10:55AM 12 BUT SOMETIMES IT DOESN'T, YOU KNOW. BUT SHE DIED--HER BRAIN
10:56AM 13 INJURIES WERE SO MASSIVE THAT THAT KILLED HER. BUT SHE ALSO
10:56AM 14 HAD RUPTURES OF THE HEART AND AORTA. SO IT'S KIND OF, YOU
10:56AM 15 KNOW, LIKE ONE MIGHT HAVE KILLED HER IN 30 SECONDS AND THE
10:56AM 16 OTHER ONE KILLED HER IN 60 SECONDS. I MEAN, IT JUST--SHE DIED
10:56AM 17 AS A RESULT OF ALL HER INJURIES, BUT THERE'S NOTHING YOU COULD
10:56AM 18 HAVE DONE. I MEAN, SHE HAS MASSIVE HEAD INJURIES, SHE'S GOT
10:56AM 19 MASSIVE CHEST INJURIES. SHE'S DEAD BECAUSE OF ALL OF THIS.

10:56AM 20 Q. OKAY. AND YOU MENTIONED IN YOUR LETTER THAT THE TIME
10:56AM 21 REQUIRED TO STRANGLE SOMEONE ENTERED INTO YOUR OPINION, DID IT
10:56AM 22 NOT?

10:56AM 23 A. YES. IT GENERALLY TAKES--BASED ON SOME EXPERIMENTATION,
10:56AM 24 IT'S BEEN FOUND THAT IF YOU DO EFFECTIVE STRANGULATION, WHICH
10:56AM 25 IS COMPRESS BOTH CAROTID ARTERIES, IT'S GONNA TAKE A MINIMUM

10:56AM 1 OF TWO TO THREE MINUTES TO PRODUCE THE INABILITY TO CONTINUE
10:57AM 2 RESPIRATING, WHICH MEANS, ESSENTIALLY, THAT THEY'RE DEAD.

10:57AM 3 Q. AND SO IT WOULD HAVE BEEN PRETTY HARD TO DO IT WITH
10:57AM 4 ONE HAND WHILE DRIVING A TRUCK, IS THAT CORRECT?

10:57AM 5 A. RIGHT. AND, YOU KNOW, THAT'S ANOTHER THING. I DIDN'T
10:57AM 6 EVEN--BUT THAT'S NOT AS--BUT--OKAY. BUT ALSO THERE'S NO
10:57AM 7 EVIDENCE THAT YOU CAN SAY SHE HAS BEEN STRANGLED. SO, I MEAN,
10:57AM 8 IT'S JUST COMPLETELY OUT.

10:57AM 9 Q. SO YOU ARE BASICALLY--YOUR BOTTOM LINE IS THAT SHE
10:57AM 10 EITHER WAS PUSHED OR JUMPED FROM THE TRUCK. IS THAT A FAIR
10:57AM 11 STATEMENT?

10:57AM 12 A. AND WAS RUN OVER. SHE HAD TO HAVE BEEN RUN OVER. SHE
10:57AM 13 WAS RUN OVER, LET'S PUT IT THAT WAY. THAT'S WHAT KILLED HER,
10:57AM 14 DEFINITELY.

10:57AM 15 MR. ELLIS: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

10:58AM 16 THE COURT: MS. MIRANDA.

10:57AM 17 REDIRECT EXAMINATION OF VINCENT J.M. DI MAIO ON BEHALF OF THE
10:58AM 18 RESPONDENT

10:58AM 19 MS. MIRANDA: I JUST HAVE A COUPLE OF QUESTIONS THAT
10:58AM 20 I WANTED TO CLEAR UP SOME THINGS.

10:58AM 21 Q. DR. LARKIN, IN HIS REPORT, YOU MENTIONED THAT THERE
10:58AM 22 WERE TWO THINGS, THAT SHE WAS NOT STRANGLED AND THAT SHE
10:58AM 23 VOLUNTARILY JUMPED. BUT, ACTUALLY, THERE WAS A THIRD THING,
10:58AM 24 AND PART OF THAT WAS THAT SHE JUMPED--HE OPINED THAT SHE WAS
10:58AM 25 NOT RUN OVER. DO YOU RECALL THAT FROM HIS REPORT?

10:58AM 1 A. RIGHT.

10:58AM 2 Q. OKAY. AND YOU VEHEMENTLY DISAGREE WITH THAT?

10:58AM 3 A. OH, YEAH. I MEAN, THE INJURIES ARE SO MASSIVE, YOU
10:58AM 4 CAN'T GET THOSE INJURIES FROM JUST JUMPING FROM A TRUCK.

10:58AM 5 Q. OKAY.

10:58AM 6 A. BECAUSE, AGAIN, YOU TUMBLE AND THAT DISSIPATES THE
10:58AM 7 ENERGY.

10:58AM 8 Q. OKAY. AND ONE OF THE THINGS, GOING BACK TO NOT BEING
10:58AM 9 RUN OVER, THAT DR. LARKIN MENTIONS IN HIS REPORT AS SUPPORTING
10:58AM 10 HIS OPINION THAT SHE WASN'T RUN OVER WAS THE FACT THAT THERE
10:58AM 11 WERE NO TIRE MARKS ON THE BODY. IS THAT ALWAYS THE CASE?

10:58AM 12 A. NO. SOMETIMES YOU'LL SEE TIRE MARKS, SOMETIMES YOU
10:59AM 13 DON'T. SOMETIMES YOU JUST SEE BLACK SMUDGES, AND SOMETIMES YOU
10:59AM 14 DON'T. IT'S NOT A HUNDRED--IT'S NOT A HUNDRED PERCENT. YOU
10:59AM 15 DON'T RELY ON THAT TO DECIDE WHETHER SOMEONE HAS BEEN RUN OVER.
10:59AM 16 LET'S PUT IT THAT WAY.

10:59AM 17 Q. SURE.

10:59AM 18 AND THEN, FINALLY, YOU WERE ASKED, AS A RESULT OF
10:59AM 19 THE BLUNT-FORCE INJURIES FROM WHICH SHE DIED, WHETHER SHE WAS
10:59AM 20 PUSHED OR WHETHER SHE JUMPED. I WANTED TO ASK YOU WHETHER IT
10:59AM 21 WAS POSSIBLE THAT SHE WAS SAT DOWN IN FRONT OF THE TRUCK AND
10:59AM 22 RUN OVER. CAN YOU TELL THAT FROM THE INJURIES?

10:59AM 23 A. IT'S ALSO POSSIBLE IF SHE WAS RUN OVER AND DRAGGED A
10:59AM 24 SHORT DISTANCE. BECAUSE SHE'S GOT WHAT'S CALLED, YOU KNOW,
10:59AM 25 BRUSH ABRASIONS--ROAD RASH, I THINK PEOPLE CALL IT--ON PART

10:59AM 1 OF HER. SO IF YOU HAD SOMEBODY IN FRONT, YOU WERE RUN OVER
10:59AM 2 AND THE BODY WAS DRAGGED A LITTLE, YES, THAT'S POSSIBLE.

11:00AM 3 Q. OKAY.

11:00AM 4 A. IT'S JUST--ALL I CAN SAY DEFINITELY, A HUNDRED PERCENT,
11:00AM 5 IN MY OPINION, IS THAT SHE WAS RUN OVER.

11:00AM 6 MS. MIRANDA: THANK YOU, DR. DI MAIO. APPRECIATE
11:00AM 7 IT.

11:00AM 8 THE COURT: OKAY.

11:00AM 9 MR. ELLIS: MAY I APPROACH, YOUR HONOR?

11:00AM 10 THE COURT: YES.

11:00AM 11 RE CROSS-EXAMINATION OF VINCENT J.M. DI MAIO ON BEHALF OF THE
11:00AM 12 PETITIONER

11:00AM 13 MR. ELLIS:

11:00AM 14 Q. DR. DI MAIO, I'VE SHOWN YOU WHAT IS HERE A PICTURE OF
11:00AM 15 THE TRUCK WITH THE UTILITY BED STICKING OUT PAST THE CAB. HAVE
11:01AM 16 YOU HAD A CHANCE TO SEE THAT PICTURE BEFORE IN YOUR MATERIAL?

11:01AM 17 A. I'VE SEEN PHOTOGRAPHS OF THE VEHICLE. THOSE WERE PART
11:01AM 18 OF THE SCENE PHOTOGRAPHS AND SUCH.

11:01AM 19 Q. NOW, IS IT POSSIBLE THAT SOME OF THESE INJURIES MAY
11:01AM 20 HAVE HAPPENED WHEN MS. GEORGE EXITED THE VEHICLE AND EITHER
11:01AM 21 HIT THE DOOR OR THAT PROTRUDING UTILITY BED?

11:01AM 22 A. NOT--NOT THE--OKAY. YOU COULD HAVE GOTTEN SOME OF THE
11:01AM 23 HEAD INJURIES, BUT YOU CAN'T GET THE CHEST INJURIES. THE CHEST
11:01AM 24 INJURIES ARE DUE TO COMPRESSION. I MEAN, ESSENTIALLY IT'S KIND
11:01AM 25 OF LIKE SQUASHING A BALLOON OR SOMETHING. THERE ARE BLOWOUT

11:01AM 1 INJURIES OF THE HEART, THERE'S A BLOWOUT OF THE AORTA, THERE'S
11:01AM 2 CRUSHING AND TEARING INJURIES OF THE LUNGS. SO--SO THAT'S DUE
11:02AM 3 TO A TIRE GOING OVER.

11:02AM 4 AND THE OTHER THING ON THE LEG, THE LEG THING IS A
11:02AM 5 TIRE AS WELL. YOU SEE THAT NOT UNCOMMONLY.

11:02AM 6 Q. AND BY BEING RUN OVER, YOU DON'T NECESSARILY MEAN THE
11:02AM 7 WHOLE BODY WAS RUN OVER, IN OTHER WORDS, DO YOU?

11:02AM 8 A. WHAT I'M SAYING IS RUN OVER WAS THAT PART OF THE LEG,
11:02AM 9 THE CHEST, AND HEAD. THE ABDOMEN, I CAN'T SAY WHETHER IT WAS
11:02AM 10 RUN OVER.

11:02AM 11 Q. AND YOU DON'T--THIS WAS PART OF DR. LARKIN'S PLAUSIBLE
11:02AM 12 ALTERNATIVE SCENARIO, WASN'T IT?

11:02AM 13 A. HE GAVE AN ALTERNATIVE, AND I DISAGREED WITH IT.

11:02AM 14 Q. RIGHT. BUT THIS WASN'T CENTRAL TO HIS FINDINGS OF
11:02AM 15 BASICALLY NO STRANGULATION, IS THAT CORRECT?

11:02AM 16 A. RIGHT, IT HAD NOTHING TO DO WITH STRANGULATION. I
11:02AM 17 AGREE WITH HIM A HUNDRED PERCENT THERE'S NO STRANGULATION.

11:02AM 18 MR. ELLIS: THANK YOU, YOUR HONOR.

11:02AM 19 MS. MIRANDA: NO FURTHER QUESTIONS, YOUR HONOR.

11:02AM 20 BUT BEFORE WE EXCUSE THIS WITNESS, WE STIPULATED TO HIM AS
11:03AM 21 AN EXPERT, BUT I WAS WONDERING WHETHER I COULD NEVERTHELESS
11:03AM 22 INTRODUCE HIS CV AS RESPONDENT'S EXHIBIT 2.

11:03AM 23 THE COURT: YES, YOU MAY.

11:03AM 24 MR. ELLIS: I HAVE NO OBJECTION YOUR HONOR. I
11:03AM 25 THINK--

11:03AM 1 THE COURT: WAIT A MINUTE. GO TO THE MICROPHONE OR
11:03AM 2 GRAB A LAPEL MIKE.

11:03AM 3 MR. ELLIS: I APOLOGIZE. I THINK I FORGOT TO ASK
11:03AM 4 THAT THIS BE ADMITTED AS PETITIONER'S EXHIBIT 3.

11:03AM 5 THE COURT: OKAY. WOULD YOU LEAVE THAT UP ON THE
11:03AM 6 SCREEN. I'M TRYING TO GET ORIENTED AS TO WHAT THAT IS. I
11:03AM 7 CAN'T MAKE OUT WHAT THAT IS A PHOTOGRAPH OF.

11:03AM 8 MR. ELLIS: IT'S A PHOTOGRAPH OF THE UTILITY BED OF
11:03AM 9 THE TRUCK.

11:03AM 10 THE COURT: THE UTILITY BED?

11:03AM 11 MR. ELLIS: YES. IT'S A PLACE WHERE YOU KEEP THINGS,
11:03AM 12 I THINK, IN A TRUCK.

11:03AM 13 THE COURT: YOU MEAN THE BACK PART OF THE PICKUP?

11:03AM 14 MR. ELLIS: YES, CORRECT. IN OTHER WORDS, THAT
11:03AM 15 WOULD BE LOOKING TOWARDS THE REAR OF THE TRUCK FROM THE FRONT
11:04AM 16 AREA. IT'S NOT A VERY GOOD PHOTO, BUT...

11:04AM 17 THE COURT: IT LOOKS LIKE SOME THINGS ARE STANDING
11:04AM 18 UP VERTICALLY THERE.

11:04AM 19 MR. ELLIS: YES. WELL, I DON'T THINK WE NEED--IF
11:04AM 20 IT'S A PROBLEM, I DON'T THINK WE NEED--

11:04AM 21 THE COURT: CAN YOU PUT IT BACK UP AND LET ME SEE IF
11:04AM 22 I CAN FIGURE IT OUT?

11:04AM 23 OKAY. I'LL ADMIT PETITIONER'S EXHIBIT 3, BUT
11:04AM 24 HONESTLY, IT LOOKS LIKE JUST OBJECTS.

11:04AM 25 MR. ELLIS: WELL, TO CLARIFY, YOUR HONOR, THIS IS

11:04AM 1 A--A UTILITY BED IS SOMETHING ON BOTH SIDES OF THE TRUCK, THE
11:05AM 2 PICKUP, USED TO STORE TOOLS OR WHATEVER. AND IT STICKS OUT
11:05AM 3 BEYOND THE TRUCK, BEYOND THE SIDE OF THE TRUCK. AND THAT'S A
11:05AM 4 PICTURE OF THE UTILITY BED IN THIS PARTICULAR TRUCK STICKING
11:05AM 5 OUT BEYOND--IN OTHER WORDS, IT--IT--IT PROTRUDES TO THE--
11:05AM 6 BEYOND THE SIDE OF THE TRUCK, AND THAT'S THE PICTURE OF IT
11:05AM 7 PROTRUDING THERE.

11:05AM 8 THE COURT: OKAY. AND YOUR POINT IS: IF SOMEONE
11:05AM 9 JUMPS OUT, THEY MIGHT JUST BE HIT BY--IF THE VEHICLE IS MOVING,
11:05AM 10 THEY MIGHT BE HIT BY THE UTILITY BED?

11:05AM 11 MR. ELLIS: THAT'S CORRECT, YOUR HONOR. THAT WAS
11:05AM 12 PART OF DR. LARKIN'S PLAUSIBLE ALTERNATIVE SCENARIO.

11:05AM 13 THE COURT: ALL RIGHT. PETITIONER'S EXHIBIT 3 IS
11:05AM 14 ADMITTED.

11:05AM 15 I'M SORRY, MS. MIRANDA. YOU OFFERED SOMETHING ELSE.
11:05AM 16 IT WAS RESPONDENT'S WHAT?

11:05AM 17 MS. MIRANDA: RESPONDENT'S EXHIBIT 2, A COPY OF
11:05AM 18 DR. DI MAIO'S CURRICULUM VITAE.

11:06AM 19 THE COURT: OKAY. RESPONDENT'S EXHIBIT 2 IS
11:06AM 20 ADMITTED ALSO.

11:06AM 21 ALL RIGHT. IS DR. DI MAIO EXCUSED, THEN?

11:06AM 22 MS. MIRANDA: I HAVE NO FURTHER QUESTIONS, YOUR
11:06AM 23 HONOR.

11:06AM 24 THE COURT: MR. ELLIS, IS DR. DI MAIO EXCUSED FOR
11:06AM 25 PURPOSES OF THIS HEARING?

11:06AM 1 MR. ELLIS: YES, HE MAY BE.

11:06AM 2 THE COURT: OKAY.

11:06AM 3 THANK YOU, DR. DI MAIO.

11:06AM 4 THE WITNESS: THANK YOU, YOUR HONOR.

11:06AM 5 THE COURT: OKAY.

11:06AM 6 THERE'S ONE OTHER WITNESS THAT WE HAD SWORN IN

11:06AM 7 EARLIER, AND THAT IS TONEY HURLEY. HE IS YOUR ONLY OTHER

11:06AM 8 WITNESS, I BELIEVE.

11:06AM 9 MS. MIRANDA: YES. AND HE'S HERE. THE ISSUE WITH
11:06AM 10 TAKING HIM EARLY IS THAT HE'S MORE OF A REBUTTAL TO ANOTHER ONE
11:06AM 11 OF THEIR WITNESSES THAT THEY HAVEN'T CALLED YET. SO IT REALLY
11:06AM 12 DOESN'T MAKE SENSE TO PUT HIM ON UNTIL THAT WITNESS HAS
11:06AM 13 TESTIFIED.

11:06AM 14 THE COURT: OKAY.

11:06AM 15 ARE THERE ANY OTHER WITNESSES HERE TO BE CALLED AT
11:06AM 16 THIS TIME?

11:07AM 17 MR. ELLIS: NOT FOR PETITIONER, YOUR HONOR.

11:07AM 18 THE COURT: OKAY.

11:07AM 19 MR. ELLIS: MAY I ASK WHO HE IS TO BE A REBUTTAL
11:07AM 20 WITNESS FOR?

11:07AM 21 MS. MIRANDA: JOHN RILEY SANDS. MR. SANDS.

11:07AM 22 THE COURT: SO WHEN WILL YOUR WITNESSES BE HERE,
11:07AM 23 MR. ELLIS?

11:07AM 24 MR. ELLIS: I REQUESTED THAT THEY BE HERE AT 1:00,
11:07AM 25 YOUR HONOR.

11:07AM 1 THE COURT: IS THERE ANYTHING WE CAN ACCOMPLISH
11:07AM 2 BETWEEN NOW AND 1:00? OR SHALL WE RECESS UNTIL 1:00?

11:07AM 3 MR. ELLIS: STIPULATIONS, PERHAPS.

11:07AM 4 THE COURT: DO YOU HAVE THEM IN WRITING?

11:07AM 5 MS. MIRANDA: NO, WE DON'T.

11:07AM 6 THE COURT: ARE YOU GOING TO DICTATE THEM INTO THE
11:07AM 7 RECORD?

11:07AM 8 MS. MIRANDA: APPARENTLY, YES, YOUR HONOR.

11:07AM 9 THE COURT: ALL RIGHT.

11:07AM 10 MR. ELLIS, GO AHEAD AND DICTATE YOUR STIPULATIONS,
11:07AM 11 IF YOU ARE READY.

11:07AM 12 MR. ELLIS: IT MAY TAKE ME A LITTLE BIT HERE.

11:07AM 13 THE COURT: DO YOU WANT TO DO THAT--IF WE RECESS,
11:07AM 14 DO YOU WANT TO DO THAT WHEN WE RECONVENE? WOULD THAT HELP YOU?

11:07AM 15 MR. ELLIS: THAT WOULD BE CONVENIENT, YOUR HONOR.

11:07AM 16 THE COURT: ALL RIGHT. WE'LL RECESS, THEN, UNTIL
11:08AM 17 1:00, I GUESS, AND THEN WE'LL GO THROUGH THE STIPULATIONS, AND
11:08AM 18 THEN YOU CAN CALL YOUR OTHER WITNESSES.

11:08AM 19 THANK YOU. WE'LL BE IN RECESS UNTIL 1 PM.

11:08AM 20 MS. MIRANDA: THANK YOU.

11:08AM 21 THE COURT: YOU ARE EXCUSED.

11:08AM 22 [RECESS]

01:08PM 23 THE COURT: THANK YOU. PLEASE BE SEATED.

01:08PM 24 ALL RIGHT. MR. ELLIS, WOULD YOU LIKE TO PRESENT
01:08PM 25 YOUR STIPULATIONS?

01:08PM 1 MR. ELLIS: YES, THANK YOU, YOUR HONOR.

01:08PM 2 THE FIRST STIPULATION WE WOULD OFFER IS AS TO
01:08PM 3 CLAYTON MCGRAW. AND THERE'S TWO PARTS OF THIS STIPULATION:
01:08PM 4 ONE IS WE WOULD OFFER IN EVIDENCE THE GRAND JURY
01:09PM 5 INDICTMENT, WHICH IS SIGNED BY MR. MCGRAW AS FOREMAN OF THE
01:09PM 6 GRAND JURY.

01:09PM 7 THE COURT: DO YOU HAVE THAT? DO YOU HAVE A COPY OF
01:09PM 8 THAT?

01:09PM 9 MR. ELLIS: YES, I DO, YOUR HONOR.

01:09PM 10 THE COURT: OKAY.

01:09PM 11 MR. ELLIS: THAT WILL BE PETITIONER'S EXHIBIT 4.

01:09PM 12 THE COURT: PETITIONER'S EXHIBIT 4 IS THE
01:09PM 13 INDICTMENT. THAT IS ADMITTED. ALL RIGHT. HANG ON JUST
01:09PM 14 A MINUTE. LET ME LOOK AT IT.

01:11PM 15 PETITIONER'S EXHIBIT 4 IS ADMITTED.

01:11PM 16 MR. ELLIS: THE SECOND PART OF THE STIPULATION AS
01:11PM 17 TO MR. MCGRAW IS THAT MR. MCGRAW WAS FOREMAN OF THE GRAND JURY
01:11PM 18 THAT INDICTED PETITIONER, AND THAT THE GRAND JURY WAS UNABLE TO
01:11PM 19 DETERMINE WHAT OBJECT WAS USED TO STRANGLE THE VICTIM, MARKIE
01:11PM 20 GEORGE, AND THAT THE GRAND JURY WAS ALSO NOT ABLE TO DETERMINE
01:11PM 21 IF IT WAS DONE MANUALLY OR WITH A ROPE OR LIGATURE. AND WE
01:11PM 22 WOULD OFFER THAT STIPULATION, YOUR HONOR.

01:13PM 23 THE COURT: OKAY. MR. ELLIS, WHAT ELSE?

01:13PM 24 MR. ELLIS: THE SECOND STIPULATION WOULD BE AS TO
01:13PM 25 WILLIAM BRANDON, B-R-A-N-D-O-N, ANDERSON, A-N-D-E-R-S-O-N.

01:13PM 1 HE IS AN EMPLOYEE OF THE HOPKINS COUNTY SHERIFF'S DEPARTMENT.
01:13PM 2 OR AT LEAST HE WAS IN THE YEAR 2000. AND THE FIRST PART OF
01:13PM 3 THAT STIPULATION IS THE FOLLOWING STATEMENT.

01:13PM 4 THE COURT: ALL RIGHT. THIS WILL BE PETITIONER'S
01:13PM 5 EXHIBIT 5.

01:13PM 6 MR. ELLIS: YES.

01:14PM 7 THE COURT: ALL RIGHT. PETITIONER'S EXHIBIT 5 IS
01:14PM 8 ADMITTED.

01:14PM 9 MR. ELLIS: AND THE SECOND PART OF THAT STIPULATION
01:14PM 10 WOULD BE THE STATEMENT CONTAINED IN SECTION G OF THE WITNESS--
01:14PM 11 THE JOINT PRE-HEARING STATEMENT, WHICH I CAN READ INTO THE
01:14PM 12 RECORD IF THE COURT WOULD...

01:14PM 13 THE COURT: LET'S SEE. ALL RIGHT. SO YOU WOULD
01:15PM 14 JUST SIMPLY READ INTO THE RECORD WHAT IS IN PART G, WHICH
01:15PM 15 CONTAINS A SUMMARY OF WILLIAM ANDERSON'S PROPOSED TESTIMONY,
01:15PM 16 IS THAT CORRECT?

01:15PM 17 MR. ELLIS: THAT IS CORRECT, YOUR HONOR. IT'S TAKEN
01:15PM 18 FROM THE TRANSCRIPT OF THE TRIAL.

01:15PM 19 THE COURT: ALL RIGHT. LET ME LOOK AT IT ONE MORE
01:15PM 20 TIME. OKAY, I SEE THAT.

01:16PM 21 MR. ELLIS: MAY I READ IT INTO THE RECORD, YOUR
01:16PM 22 HONOR?

01:16PM 23 THE COURT: YES.

01:16PM 24 MR. ELLIS: THE STIPULATION AS TO MR. ANDERSON WAS
01:17PM 25 THAT HE WAS AN EMPLOYEE OF THE HOPKINS COUNTY SHERIFF'S OFFICE,

01:17PM 1 AND HE TOOK THE STATEMENT OF MS. BALL, MS. SABRINA BALL,
01:17PM 2 REGARDING A FEBRUARY 26, 2000, ATTEMPT BY THE VICTIM,
01:17PM 3 MS. GEORGE, TO JUMP FROM THE TRUCK. AND THE STATEMENT THAT
01:17PM 4 HE TOOK WAS THAT HE WAS WORKING IN THE HOPKINS COUNTY SHERIFF'S
01:17PM 5 OFFICE ON FEBRUARY 26, 2000, AND RESPONDED TO A CALL AT
01:17PM 6 MS. BALL'S HOME. MARKIE GEORGE WAS THERE, AND SHE WAS SHAKING
01:17PM 7 AND CRYING. SHE SAID THAT SHE HAD BEEN IN A VERBAL ARGUMENT
01:17PM 8 WITH MR. ACKER. SHE SAID THAT SHE WAS AT "BUSTIN LOOSE" AND
01:17PM 9 LEFT, AND DURING AN ARGUMENT IN THE TRUCK SHE HAD ATTEMPTED
01:17PM 10 TO EXIT THE VEHICLE WHILE IT WAS DRIVING DOWN THE ROAD, AND
01:17PM 11 MR. ACKER HAD GRABBED HER BY THE ARM TO KEEP HER FROM GETTING
01:17PM 12 OUT.

01:17PM 13 SHE ALSO SAID THAT THEY CONTINUED ARGUING WHEN THEY
01:17PM 14 RETURNED TO MS. ACKER'S RESIDENCE, AND SHE STEPPED BETWEEN
01:18PM 15 THEM, AND MR. ACKER PICKED UP HIS MOTHER AND THREW HER ON THE
01:18PM 16 COUCH. MS. GEORGE SAID THAT SHE WAS GOING TO CALL THE POLICE,
01:18PM 17 AND MR. ACKER RAN THROUGH THE SLIDING GLASS WINDOW TO TRY TO
01:18PM 18 GET AWAY. MS. GEORGE LEFT THE ACKER HOUSE AT THAT TIME.

01:18PM 19 AND THE DEFENSE OFFERED THIS EVIDENCE, AND THE COURT
01:18PM 20 SUSTAINED AN OBJECTION TO IT.

01:18PM 21 THAT WOULD BE THE END OF THE STIPULATION AS TO
01:18PM 22 OFFICER ANDERSON.

01:18PM 23 THE COURT: OKAY.

01:18PM 24 MR. ELLIS: AND THE THIRD STIPULATION WE HAVE WOULD
01:18PM 25 BE IN RELATION TO WILLIAM ALLEN STORY.

01:18PM 1 THE COURT: WALTER ALLEN STORY?

01:18PM 2 MR. ELLIS: I'M SORRY. WALTER ALLEN STORY. AND
01:18PM 3 THIS STIPULATION IS THAT MR. STORY WAS THE 911 COMMUNICATIONS
01:19PM 4 SUPERVISOR IN HOPKINS COUNTY AND WORKED FOR THE HOPKINS COUNTY
01:19PM 5 SHERIFF'S OFFICE, AND THAT THE 911 RADIO LOG RECORDED A CALL
01:19PM 6 FROM MR. SMIDDY AT 11:45 AM. THIS IS ON MARCH 12TH, 2000. AND
01:19PM 7 A CALL FROM MR. FERRELL AT 11:47 AM. OFFICER HILL ARRIVED AT
01:19PM 8 THE LOCATION AT 11:51 AM. AND AT 11:53 AM, THE OFFICER CALLED
01:19PM 9 IN TO SAY THERE WAS NO PULSE. THAT WOULD BE THE END OF THE
01:19PM 10 STIPULATION. AND IT IS CONTAINED IN SECTION H OF THE JOINT
01:19PM 11 PRE-HEARING STATEMENT.

01:20PM 12 THE COURT: MR. SMIDDY IS CALLING FOR MR. FERRELL?

01:20PM 13 MR. ELLIS: NO. IT'S A CALL FROM MR. SMIDDY TO THE
01:20PM 14 SHERIFF'S DEPARTMENT.

01:20PM 15 THE COURT: YOU SAID SOMETHING ABOUT MR. FERRELL.

01:20PM 16 MR. ELLIS: YES. THAT WAS THE SECOND CALL RECEIVED
01:20PM 17 BY THE SHERIFF'S DEPARTMENT.

01:20PM 18 THE COURT: OKAY.

01:20PM 19 MR. ELLIS: A CALL FROM MR. SMIDDY TO THE SHERIFF.
01:20PM 20 AND A SECOND CALL FROM MR. FERRELL TO THE SHERIFF'S DEPARTMENT.

01:20PM 21 THE COURT: AND THESE TWO MEN ARE CALLING IN TO SAY
01:20PM 22 NO PULSE?

01:20PM 23 MR. ELLIS: NO. THEY'RE CALLING IN TO SAY DIFFERENT
01:20PM 24 THINGS. IT'S NOT SPECIFIED HERE, BUT THE CALL FROM MR. SMIDDY
01:20PM 25 WAS RELATING TO THE ABDUCTION WHEN MR. ACKER LEFT WITH THE

01:20PM 1 VICTIM.

01:20PM 2 AND THE CALL FROM MR. FERRELL AT 11:47 WAS IN
01:20PM 3 RELATION TO HIM SEEING THE TRUCK BY THE ROAD. AND THE BODY, I
01:20PM 4 THINK.

01:20PM 5 [PETITIONER SPEAKING ALOUD, BUT NOT LOUD ENOUGH TO
01:20PM 6 DISCERN WHAT HE IS SAYING.]

01:20PM 7 MR. ELLIS: I'M SORRY. NO, IT'S JUST THAT HE SAW A
01:21PM 8 TRUCK BY THE ROAD. THIS IS A CALL FROM MR. FERRELL.

01:21PM 9 [PETITIONER SPEAKING ALOUD, BUT NOT LOUD ENOUGH TO
01:21PM 10 DISCERN WHAT HE IS SAYING.]

01:21PM 11 THE COURT: IF YOU NEED TO TALK TO YOUR CLIENT, GO
01:21PM 12 OVER THERE AND TALK TO HIM.

01:21PM 13 MR. ELLIS: SO THAT WOULD BE THE STIPULATION, YOUR
01:21PM 14 HONOR.

01:21PM 15 MS. MIRANDA: YOUR HONOR, IF I MAY--

01:21PM 16 THE COURT: I DON'T KNOW WHAT THE STIPULATION IS.
01:21PM 17 I'M TRYING TO FIGURE IT OUT.

01:21PM 18 MS. MIRANDA: YOUR HONOR, IF I MAY, MR. STORY'S
01:21PM 19 TESTIMONY IS IN THE TRIAL RECORD. AND SO THE REASON THAT I
01:21PM 20 AGREED TO THE STIPULATION IS THAT THERE'S NO DIFFERENCE BETWEEN
01:21PM 21 THE TESTIMONY--THE CITES THAT YOU SEE HERE IN THIS PRETRIAL
01:21PM 22 STATEMENT ARE TO CITES IN THE ORIGINAL TRIAL RECORD. AND SO
01:21PM 23 THE REASON THAT WE AGREED TO WHAT HE WAS GOING TO OFFER IS
01:21PM 24 BECAUSE IT'S BASICALLY THE TRIAL TESTIMONY.

01:21PM 25 MR. ELLIS: THAT IS CORRECT, YOUR HONOR.

01:21PM 1 THE COURT: SO WHAT DID MR. SMIDDY SAY WHEN HE
01:21PM 2 CALLED?

01:21PM 3 MR. ELLIS: MR. SMIDDY--THERE'S SEVERAL--SOME OF
01:21PM 4 THE STIPULATIONS RELATE TO THAT. HE SAID HE SAW A--MR. ACKER
01:22PM 5 DRIVE OFF IN THE TRUCK WITH THE VICTIM, AND THAT--THERE'S
01:22PM 6 THE ORIGINAL STATEMENTS THAT SHE WAS TRYING TO GET OUT OF
01:22PM 7 THE VEHICLE.

01:22PM 8 THE COURT: STATEMENTS FROM WHO, SMIDDY?

01:22PM 9 MR. ELLIS: YES, SMIDDY, YOUR HONOR.

01:22PM 10 THE COURT: OKAY.

01:22PM 11 MS. MIRANDA: WE'RE NOT STIPULATING TO THOSE. THOSE
01:22PM 12 ARE NOT PART OF THE STIPULATION. THIS STIPULATION WAS SOLELY
01:22PM 13 INTENDED TO ESTABLISH A TIMELINE THAT WAS ESTABLISHED AT TRIAL.
01:22PM 14 THAT WAS MY UNDERSTANDING OF IT.

01:22PM 15 MR. ELLIS: THAT IS MY UNDERSTANDING TOO, YOUR
01:22PM 16 HONOR. IT WAS A VERY LIMITED STIPULATION, SIMPLY RELATING TO
01:22PM 17 THE TIMELINE BETWEEN THE 911 CALL COMING IN AND THE BODY BEING
01:22PM 18 FOUND AND THE OFFICER CALLING IN TO SAY THERE WAS NO PULSE IN
01:22PM 19 THE BODY.

01:22PM 20 THE COURT: SO YOU ARE SAYING IT DOESN'T MATTER WHAT
01:22PM 21 THEY SAID, IT'S JUST THE TIMING OF THE CALL?

01:22PM 22 MR. ELLIS: EXACTLY, YES, THIS IS JUST THE TIMELINE
01:22PM 23 OF THE CALL, YES.

01:22PM 24 THE COURT: ALL RIGHT.

01:22PM 25 MR. ELLIS: IN TERMS OF THIS STIPULATION IT DOESN'T

01:22PM 1 MATTER. IN PERHAPS OTHER MATTERS IT DOES MATTER. BUT JUST
01:22PM 2 IN TERMS OF THIS STIPULATION, WHAT THEY SAID DOES NOT MATTER.
01:23PM 3 WE WILL BE DEVELOPING WHAT WAS SAID IN OTHER--THROUGH OTHER
01:23PM 4 WITNESSES, YOUR HONOR.

01:23PM 5 THE COURT: OKAY.

01:23PM 6 MR. ELLIS: NOW, THE LAST STIPULATION, AS TO BILL
01:23PM 7 REECE, R-E-E-C-E, THIS IS A SHORT STIPULATION. THE STIPULATION
01:23PM 8 IS CONTAINED IN SECTION M OF THE JOINT HEARING STATEMENT, AND
01:23PM 9 IT IS SIMPLY THAT MR. REECE WAS EMPLOYED BY THE HOPKINS COUNTY
01:23PM 10 SHERIFF'S OFFICE AT--ON MARCH 12TH, 2000, AND AT THE SHERIFF'S
01:23PM 11 OFFICE THIS PATROLMAN INTERVIEWED MR. ACKER AFTER HE WAVED
01:23PM 12 DOWN THE PATROLMAN AND SURRENDERED TO MR. REECE--AND MR. ACKER
01:23PM 13 SURRENDERED TO MR. REECE, AND THAT'S IT.

01:24PM 14 THE COURT: OKAY.

01:24PM 15 MR. ELLIS: AND THAT WOULD CONCLUDE THE STIPULATIONS,
01:24PM 16 YOUR HONOR.

01:24PM 17 THE COURT: ALL RIGHT.

01:24PM 18 DO YOU HAVE A WITNESS READY?

01:24PM 19 MR. ELLIS: YES, WE DO, YOUR HONOR. WE WOULD CALL
01:24PM 20 MR. SANDS.

01:24PM 21 THE COURT: OKAY. MR. SANDS.

01:24PM 22 MR. ELLIS: JOHN RILEY SANDS.

01:24PM 23 THE COURT: ARE THERE OTHER WITNESSES IN THE
01:24PM 24 COURTROOM FOR YOU, MR. ELLIS?

01:24PM 25 MR. ELLIS: I BELIEVE THEY'VE BEEN ASKED TO STAY

01:24PM 1 OUTSIDE, YOUR HONOR. I DON'T SEE ANYBODY ELSE HERE.

01:24PM 2 THE COURT: OKAY.

01:24PM 3 MR. SANDS, COME ON DOWN IN FRONT. WOULD YOU PLEASE
01:25PM 4 RAISE YOUR RIGHT HAND. THIS LADY IS GOING TO PLACE YOU UNDER
01:25PM 5 OATH.

01:25PM 6 DEPUTY COURT CLERK: DO YOU SWEAR THE TESTIMONY YOU
01:25PM 7 SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE THE TRUTH, THE
01:25PM 8 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

01:25PM 9 THE WITNESS: [MOVING HEAD UP AND DOWN]

01:25PM 10 THE COURT: ALL RIGHT. JUST COME AROUND AND HAVE A
01:25PM 11 SEAT.

01:25PM 12 MR. ELLIS.

01:25PM 13 DIRECT EXAMINATION OF JOHN RILEY SANDS ON BEHALF OF THE
01:25PM 14 PETITIONER

01:25PM 15 MR. ELLIS:

01:25PM 16 Q. MR. SANDS, COULD YOU STATE AND SPELL YOUR NAME FOR THE
01:25PM 17 RECORD, PLEASE.

01:25PM 18 A. JOHN RILEY SANDS, S-A-N-D-S.

01:25PM 19 Q. AND WHERE DO YOU CURRENTLY LIVE?

01:25PM 20 A. COMMERCE, TEXAS.

01:25PM 21 Q. AND WHAT IS YOUR OCCUPATION?

01:25PM 22 A. I'M A PRIVATE INVESTIGATOR.

01:25PM 23 Q. AND HAVE YOU RECEIVED SPECIAL TRAINING AS PART OF YOUR
01:25PM 24 CURRENT OCCUPATION AS AN INVESTIGATOR?

01:25PM 25 A. YES, SIR, SPECIAL TRAINING, ALSO LAW ENFORCEMENT.

01:25PM 1 Q. COULD YOU BRIEFLY DETAIL YOUR EDUCATIONAL BACKGROUND.

01:25PM 2 A. YES, SIR. I'M A GRADUATE OF TEXAS A&M UNIVERSITY WITH
01:25PM 3 A DEGREE IN CRIMINOLOGY WITH EMPHASIS ON INDUSTRIAL TECHNOLOGY
01:26PM 4 AND BUSINESS, ALSO WORK ON MY MASTER'S DEGREE IN SOCIOLOGY.

01:26PM 5 Q. AND WHERE WAS THAT DEGREE FROM?

01:26PM 6 A. AT TEXAS A&M-COMMERCE.

01:26PM 7 Q. AND DID YOU RECEIVE SOME TRAINING AFTER YOUR GRADUATION?

01:26PM 8 A. YES, SIR, SEVERAL COURSES THAT YOU ARE REQUIRED TO TAKE
01:26PM 9 NOT ONLY THROUGH POLICE WORK BUT ALSO AS A PRIVATE INVESTIGATOR.
01:26PM 10 WE HAVE TO HAVE SO MUCH TRAINING EVERY TWO YEARS.

01:26PM 11 Q. AND HOW MUCH TRAINING IS THAT?

01:26PM 12 A. YOU'VE GOT TO HAVE 40 HOURS EVERY TWO YEARS, AND YOU'VE
01:26PM 13 GOT TO KEEP UP WITH ETHICS AND RULES AND PROCEDURES, THINGS OF
01:26PM 14 THAT NATURE.

01:26PM 15 Q. AND HOW LONG HAVE YOU BEEN PRACTICING AS A PRIVATE
01:26PM 16 INVESTIGATOR IN THE STATE OF TEXAS?

01:26PM 17 A. ABOUT 31 YEARS.

01:26PM 18 Q. AND HAVE YOU BEEN--HAVE YOU WORKED MURDER CASES BEFORE?

01:26PM 19 A. YES, SIR.

01:26PM 20 Q. APPROXIMATELY HOW MANY?

01:27PM 21 A. ABOUT 30.

01:27PM 22 Q. AND WHAT WAS YOUR CONNECTION TO THE DANIEL CLATE ACKER
01:27PM 23 CASE?

01:27PM 24 A. I WAS A COURT-APPOINTED INVESTIGATOR FOR THE DEFENSE.

01:27PM 25 Q. AND WHO HIRED YOU FOR THIS?

01:27PM 1 A. THE COUNTY OF HOPKINS. I GOT A CALL FROM THE ATTORNEYS
01:27PM 2 REPRESENTING MR. ACKER THAT THE JUDGE HAD APPOINTED ME TO
01:27PM 3 ASSIST THEM IN PREPARATION OF THE CASE.

01:27PM 4 MR. ELLIS: YOUR HONOR, WE WOULD OFFER MR. SANDS
01:27PM 5 AS AN EXPERT WITNESS, AS AN EXPERT INVESTIGATOR, BASED ON HIS
01:27PM 6 BACKGROUND AND QUALIFICATIONS.

01:27PM 7 THE COURT: OKAY. YOU CAN CONTINUE ASKING QUESTIONS.
01:27PM 8 IF THERE'S NO OBJECTION TO HIS QUALIFICATIONS, JUST KEEP GOING.

01:27PM 9 MR. ELLIS:

01:27PM 10 Q. DID YOU REVIEW CERTAIN DOCUMENTS AS A PART OF YOUR
01:27PM 11 INVOLVEMENT IN THE ACKER CASE, MR. SANDS?

01:27PM 12 A. YES, SIR, I DID.

01:27PM 13 Q. DO YOU REMEMBER WHAT YOU REVIEWED?

01:27PM 14 A. THERE WERE NUMEROUS POLICE REPORTS, FORENSIC REPORTS,
01:28PM 15 SEEMS TO ME LIKE THERE WERE SOME NOTES FROM THE ATTORNEYS.

01:28PM 16 Q. AND WERE YOU ASKED TO PERFORM CERTAIN EXPERIMENTS?

01:28PM 17 A. MR. ELLIS, I CAN'T REMEMBER IF I WAS ASKED OR IF I
01:28PM 18 JUST TOOK IT ON MYSELF TO DO SOME EXPERIMENTS TO GIVE TO THE
01:28PM 19 ATTORNEYS FOR THEIR USE, IF NEEDED.

01:28PM 20 Q. AS PART OF ONE OF THESE EXPERIMENTS, DID YOU DRIVE FROM
01:28PM 21 MR. ACKER'S TRAILER HOME TO THE CRIME SCENE WHERE THE VICTIM'S
01:28PM 22 BODY WAS FOUND?

01:28PM 23 A. YES, SIR, I DID.

01:28PM 24 Q. AND DO YOU REMEMBER APPROXIMATELY HOW LONG THAT TOOK?

01:28PM 25 A. IT WAS ABOUT 10 YEARS AGO, BUT I WOULD SAY SOMEWHERE

01:28PM 1 THREE, FOUR, FIVE MINUTES MAYBE. AND THAT'S A GUESS.

01:28PM 2 Q. NOW, DO YOU REMEMBER IF YOU WERE ALLOWED TO PRESENT
01:28PM 3 THIS EVIDENCE TO MR. ACKER'S JURY?

01:28PM 4 A. TO THE JURY?

01:29PM 5 Q. YES, TO THE JURY.

01:29PM 6 MS. MIRANDA: YOUR HONOR, I'M GOING TO OBJECT TO
01:29PM 7 ANY LINE OF QUESTIONING ABOUT WHAT WAS ALLOWED AT TRIAL OR NOT
01:29PM 8 ALLOWED AT TRIAL, AS IT'S NOT RELEVANT TO THE ACTUAL-INNOCENCE
01:29PM 9 PART OF THIS HEARING.

01:29PM 10 THE COURT: HOW IS IT RELEVANT?

01:29PM 11 MR. ELLIS: WELL, THE RELEVANCE WOULD BE THAT
01:29PM 12 SOME EFFORT WAS MADE TO SHOW AT TRIAL THAT THERE WAS NO
01:29PM 13 STRANGULATION.

01:29PM 14 THE COURT: THAT MIGHT GO TO AN INEFFECTIVE-
01:29PM 15 ASSISTANCE CLAIM. RIGHT?

01:29PM 16 MR. ELLIS: WELL, I THINK PERHAPS THINGS HAVE
01:29PM 17 CHANGED SINCE THERE HAS BEEN A STIPULATION AS TO NO
01:29PM 18 STRANGULATION. SO I'LL MOVE ON, YOUR HONOR.

01:29PM 19 THE COURT: OKAY.

01:29PM 20 MR. ELLIS:

01:29PM 21 Q. NOW, AS PART OF YOUR INVESTIGATION, DID YOU OBTAIN A
01:29PM 22 TRUCK SIMILAR TO THAT THAT WAS DRIVEN BY MR. ACKER ON MARCH 12,
01:30PM 23 2000?

01:30PM 24 A. YES, SIR.

01:30PM 25 Q. DO YOU REMEMBER WHAT THAT TRUCK WAS?

01:30PM 1 A. IT WAS ONE SIMILAR. IT MIGHT NOT HAVE BEEN EXACTLY THE
01:30PM 2 SAME MODEL, BUT IT WAS A SIMILAR TRUCK. SEEMS LIKE IT WAS A
01:30PM 3 FORD 350 OR SOMETHING LIKE THAT.

01:30PM 4 Q. NOW, IS THIS A FAIRLY WIDE-BODIED TRUCK?

01:30PM 5 A. IT WAS A FLATBED TRUCK, SO, YES, I WOULD--IF YOU WANT
01:30PM 6 TO CALL IT A WIDE BED--WIDE, IT WOULD BE.

01:30PM 7 Q. HOW BIG A TRUCK, A HALF-TON, THREE-QUARTER TON, OR A
01:30PM 8 FULL TON? DO YOU KNOW?

01:30PM 9 A. SEEMS TO ME LIKE IT'S THREE-QUARTER TON, MAYBE A TON.
01:30PM 10 I'M NOT EXACTLY SURE--CAN'T REMEMBER RIGHT NOW.

01:30PM 11 Q. NOW, THIS TRUCK YOU OBTAINED THAT WAS SIMILAR TO THAT
01:30PM 12 USED IN THE--ON THE--IN THE INCIDENT HERE, DO YOU REMEMBER
01:30PM 13 USING THE TRUCK TO MAKE SOME EXPERIMENTS?

01:30PM 14 A. YES.

01:30PM 15 Q. AND DO YOU RECALL NOW--DO YOU RECALL BEING IN THIS
01:31PM 16 TRUCK AND WHAT YOU DID WITH IT? DO YOU RECALL THE INSIDE OF
01:31PM 17 THE TRUCK?

01:31PM 18 A. YES, SIR.

01:31PM 19 Q. IS THIS TRUCK WIDER THAN, SAY, A CONVENTIONAL CAR OR
01:31PM 20 SEDAN?

01:31PM 21 A. YES, SIR, IT WOULD BE.

01:31PM 22 Q. AND IS THE INTERIOR FRONT SEAT WIDER THAN THE FRONT
01:31PM 23 SEAT IN A NORMAL-SIZE SEDAN?

01:31PM 24 A. YES, SIR.

01:31PM 25 Q. AND BY "NORMAL-SIZE SEDAN," I DON'T MEAN A COMPACT,

01:31PM 1 BUT I MEAN A FULL-SIZE, SAY, CADILLAC OR SOMETHING LIKE THAT.

01:31PM 2 A. IT WOULD BE A LITTLE WIDER THAN AN INTERMEDIATE-SIZE
01:31PM 3 AUTOMOBILE.

01:31PM 4 Q. OKAY. AND WHAT WAS THE TEST THAT YOU PERFORMED IN THE
01:31PM 5 TRUCK?

01:31PM 6 A. SIT IN THE DRIVER'S SEAT AND SEE IF YOU COULD REACH THE
01:31PM 7 DRIVER'S DOOR [SIC] WITHOUT--AND STILL BE ABLE TO SEE THE ROAD
01:31PM 8 AND DRIVE.

01:31PM 9 Q. AND WERE YOU ABLE TO DO THAT?

01:31PM 10 A. NO, SIR, NOT REALLY.

01:31PM 11 Q. AND WERE YOU ABLE TO--WAS IT YOUR OPINION THAT YOU
01:32PM 12 WOULD BE ABLE TO OPEN THE DOOR AND PUSH SOMEBODY OUT OF THE
01:32PM 13 VEHICLE WHILE STILL DRIVING?

01:32PM 14 A. FOR ME, IT WOULD BE REAL DIFFICULT, YES, SIR.

01:32PM 15 Q. HOW TALL ARE YOU?

01:32PM 16 A. 5-8.

01:32PM 17 Q. NOW, YOU PERFORMED THESE EXPERIMENTS WITHOUT ANYBODY
01:32PM 18 ELSE IN THE CAR, IS THAT CORRECT?

01:32PM 19 A. YES, SIR. I JUST FOUND A FLATBED THAT I THOUGHT WAS
01:32PM 20 SIMILAR AND JUST WANTED TO SEE WHAT IT WOULD BE LIKE. SO I DID
01:32PM 21 IT WITHOUT--JUST BY MYSELF.

01:32PM 22 Q. SO THERE WOULD HAVE BEEN NOBODY IN THE PASSENGER SEAT
01:32PM 23 AROUND WHICH YOUR ARM WOULD HAVE HAD TO HAVE GONE, IS THAT
01:32PM 24 CORRECT?

01:32PM 25 A. THERE WAS NOT.

01:32PM 1 Q. AND NOBODY STRUGGLING AGAINST YOU TO PREVENT THEMSELVES
01:32PM 2 FROM BEING THROWN OUT, IS THAT CORRECT?

01:32PM 3 A. THAT'S RIGHT.

01:32PM 4 Q. AND NOBODY REALLY OBSTRUCTING OR TAKING YOUR HAND AWAY
01:32PM 5 FROM WHEN YOU TRIED TO REACH OUT TO THAT DOOR HANDLE, IS THAT
01:32PM 6 RIGHT?

01:32PM 7 A. THAT'S CORRECT.

01:33PM 8 MR. ELLIS: THAT'S ALL THE QUESTIONS I HAVE, YOUR
01:33PM 9 HONOR.

01:33PM 10 THE COURT: ALL RIGHT.

01:33PM 11 MS. MIRANDA.

01:33PM 12 CROSS-EXAMINATION OF JOHN RILEY SANDS ON BEHALF OF THE
01:33PM 13 RESPONDENT

01:33PM 14 MS. MIRANDA:

01:33PM 15 Q. MR. SANDS, WHAT WAS THE PURPOSE OF THAT EXPERIMENT?

01:33PM 16 A. JUST TO SEE IF YOU COULD REACH ACROSS AND OPEN THE DOOR
01:33PM 17 AND--YOU KNOW, 'CAUSE READING POLICE REPORTS OR TALKING TO AN
01:33PM 18 ATTORNEY, SOME WERE UNDER THE IMPRESSION THAT'S WHAT HAPPENED.

01:33PM 19 Q. SO YOU WERE ATTEMPTING TO SHOW THAT IT WAS NOT POSSIBLE
01:33PM 20 FOR MR. ACKER TO REACH ACROSS AND OPEN THE DOOR WHILE HE WAS
01:33PM 21 DRIVING. CORRECT?

01:33PM 22 A. YES, THAT WOULD BE CORRECT.

01:33PM 23 Q. OKAY. WOULD YOU AGREE WITH ME THAT THE VALUE OF THAT
01:33PM 24 EXPERIMENT IS GOING TO DEPEND ON A LOT OF VARIABLES?

01:34PM 25 A. YES, MA'AM, I WOULD.

01:34PM 1 Q. OKAY. IT'S GONNA DEPEND ON THE SIMILARITIES BETWEEN
01:34PM 2 YOU AND MR. ACKER. CORRECT?

01:34PM 3 A. YES.

01:34PM 4 Q. OKAY. WOULD YOU AGREE WITH ME THAT WHAT ONE PERSON
01:34PM 5 CAN DO WHILE SITTING IN A TRUCK, AND HOW FAR THEY CAN REACH,
01:34PM 6 IS GONNA BE REALLY DIFFERENT?

01:34PM 7 A. YES.

01:34PM 8 Q. OKAY. SO, FOR INSTANCE, WHAT I COULD REACH AND WHAT
01:34PM 9 DIRK NOWITZKI COULD REACH ARE TWO DIFFERENT THINGS, A SEVEN-
01:34PM 10 FOOTER AND A 5-6, TOTALLY DIFFERENT?

01:34PM 11 A. THAT'S RIGHT.

01:34PM 12 Q. OKAY. NOW, YOU'VE TESTIFIED THAT YOU ARE 5-8. CORRECT?

01:34PM 13 A. YES, MA'AM.

01:34PM 14 Q. HOW TALL IS MR. ACKER?

01:34PM 15 A. 5-11, 6 FOOT.

01:34PM 16 Q. OKAY. SO IF IT WERE TO BE SHOWN THAT HE WERE, IN FACT,
01:34PM 17 6 FEET TALL, THEN HE'S A LITTLE BIT TALLER THAN YOU ARE?

01:34PM 18 A. SURE.

01:34PM 19 Q. SO HE COULD PROBABLY REACH A LITTLE BIT FURTHER.
01:34PM 20 CORRECT?

01:34PM 21 MR. ELLIS: OBJECTION. THAT ASKS FOR A CONCLUSION
01:34PM 22 THAT COULD NOT POSSIBLY BE MADE.

01:34PM 23 MS. MIRANDA: ACTUALLY, THAT'S MY POINT, YOUR HONOR,
01:34PM 24 IS THAT HE'S TRYING TO DRAW A CONCLUSION BY SAYING IT'S NOT
01:34PM 25 POSSIBLE TO REACH, AND I'M TRYING TO SHOW THAT THERE ARE

01:35PM 1 VARIABLES, THAT HE CAN'T POSSIBLY DRAW THAT CONCLUSION.

01:35PM 2 MR. ELLIS: I THINK IT GOES TO THE WEIGHT OF THE
01:35PM 3 EVIDENCE.

01:35PM 4 THE COURT: WELL, I THINK YOUR QUESTION WAS: HE
01:35PM 5 COULD PROBABLY REACH A LITTLE FURTHER SINCE HE'S 6 FEET TALL.
01:35PM 6 AND THEN YOU OBJECTED.

01:35PM 7 MR. ELLIS: YES. I BELIEVE THE QUESTION WAS
01:35PM 8 SOMETHING LIKE HE COULDN'T DO THAT.

01:35PM 9 THE COURT: I THINK THE QUESTION WAS HE COULD
01:35PM 10 PROBABLY REACH A LITTLE FURTHER.

01:35PM 11 MR. ELLIS: OKAY.

01:35PM 12 THE COURT: I THINK THE WITNESS CAN ANSWER THAT
01:35PM 13 QUESTION. IT DOESN'T TAKE AN EXPERT TO ANSWER THAT.

01:35PM 14 DO YOU HAVE AN OPINION AS TO WHETHER MR. ACKER,
01:35PM 15 BEING TALLER THAN YOU, COULD HAVE PERHAPS REACHED A LITTLE
01:35PM 16 FURTHER THAN YOU?

01:35PM 17 THE WITNESS: YES, SIR.

01:35PM 18 THE COURT: AND YOUR OPINION IS WHAT?

01:35PM 19 THE WITNESS: HE COULD HAVE REACHED FURTHER.

01:35PM 20 THE COURT: OKAY.

01:35PM 21 NEXT QUESTION.

01:35PM 22 MS. MIRANDA: THANK YOU.

01:35PM 23 Q. AND IF YOU ARE DOING THAT KIND OF EXPERIMENT, TRYING TO
01:35PM 24 DETERMINE HOW FAR A PERSON CAN REACH, IT'S NOT SIMPLY A MATTER
01:35PM 25 OF HEIGHT, EITHER, IS IT?

01:36PM 1 A. THAT'S PROBABLY 98 PERCENT OF WHAT YOU WOULD BE LOOKING
01:36PM 2 FOR.

01:36PM 3 Q. OKAY. IS THERE ANYTHING ELSE YOU WOULD WANT TO
01:36PM 4 CONSIDER IN DETERMINING HOW FAR AN INDIVIDUAL COULD REACH?

01:36PM 5 A. MAYBE THE WAY YOU ARE SITTING IN THE SEAT. YOU MIGHT
01:36PM 6 HAVE SCOOTED OVER A LITTLE BIT OR--

01:36PM 7 Q. OKAY. COULD PEOPLE WHO HAVE THE SAME HEIGHT HAVE A
01:36PM 8 DIFFERENT WINGSPAN AS FAR AS HOW FAR THEY CAN REACH FROM TIP
01:36PM 9 TO TIP?

01:36PM 10 A. DIFFERENT PEOPLE?

01:36PM 11 Q. YES. TWO PEOPLE WHO ARE 6 FEET TALL CAN HAVE DIFFERENT
01:36PM 12 ARM LENGTHS, IS THAT CORRECT?

01:36PM 13 A. I UNDERSTAND THAT IS POSSIBLE.

01:36PM 14 Q. OKAY. AND IN ADDITION TO THE HEIGHT, TWO PEOPLE WHO
01:36PM 15 ARE 6 FEET TALL, SOMEONE COULD HAVE LONGER LEGS AND A SHORTER
01:36PM 16 TORSO, AND OTHER PEOPLE COULD HAVE A LONGER TORSO AND SHORTER
01:36PM 17 LEGS, IS THAT CORRECT?

01:36PM 18 A. I WOULD ASSUME, YES.

01:36PM 19 Q. OKAY. SO THERE'S MANY DIFFERENT VARIABLES THAT WE NEED
01:36PM 20 TO CONSIDER IN DOING THIS KIND OF EXPERIMENT TO DETERMINE THE
01:36PM 21 VALUE OF THAT EXPERIMENT. CORRECT?

01:36PM 22 A. THAT WOULD BE RIGHT.

01:36PM 23 Q. OKAY. DID YOU CONSIDER ANY OF THOSE VARIABLES WHEN YOU
01:37PM 24 WERE DOING THIS EXPERIMENT?

01:37PM 25 A. SURE.

01:37PM 1 Q. OKAY. HOW SO? DID YOU MEASURE MR. ACKER'S WINGSPAN?

01:37PM 2 A. NO, WE DIDN'T. IT WAS JUST SOMETHING I WANTED TO SEE
01:37PM 3 FOR MYSELF MORE THAN ANYTHING, AND I RELAYED THAT INFORMATION
01:37PM 4 TO THE ATTORNEYS.

01:37PM 5 Q. OKAY. WE CAN JUST CLEAR THIS UP RIGHT NOW. YOU ARE
01:37PM 6 NOT TELLING US THAT IT'S IMPOSSIBLE FOR MR. ACKER TO REACH THE
01:37PM 7 DOOR FROM WHERE HE WAS SITTING IN THAT TRUCK?

01:37PM 8 A. I WOULDN'T KNOW IF HE COULD OR NOT.

01:37PM 9 MS. MIRANDA: OKAY.

01:37PM 10 I HAVE NO FURTHER QUESTIONS.

01:37PM 11 THE COURT: OKAY.

01:37PM 12 MR. ELLIS?

01:37PM 13 REDIRECT EXAMINATION OF JOHN RILEY SANDS ON BEHALF OF THE
01:37PM 14 PETITIONER

01:37PM 15 MR. ELLIS:

01:37PM 16 Q. THE PRESENCE OF ANOTHER PERSON IN THE TRUCK WOULD HAVE
01:37PM 17 MADE YOUR REACH SHORTER, IS THAT CORRECT, IF YOU HAD TO GO
01:37PM 18 AROUND THEM?

01:37PM 19 A. IT WOULD MAKE SOME DIFFERENCE, YES, SIR.

01:38PM 20 Q. AND IF THE PERSON WAS RESISTING THAT, IT WOULD MAKE THE
01:38PM 21 WHOLE EXPERIMENT RATHER MORE--WELL, IT WOULD MAKE THE OPENING
01:38PM 22 OF THE DOOR MUCH MORE DIFFICULT, IS THAT NOT CORRECT?

01:38PM 23 A. YES, SIR.

01:38PM 24 MR. ELLIS: I HAVE NOTHING FURTHER.

01:38PM 25 MS. MIRANDA: NOTHING FURTHER, YOUR HONOR.

01:38PM 1 THE COURT: OKAY.

01:38PM 2 IS THIS WITNESS EXCUSED, MR. ELLIS?

01:38PM 3 MR. ELLIS: NO, SIR.

01:38PM 4 THE COURT: HE'S EXCUSED?

01:38PM 5 MR. ELLIS: HE'S EXCUSED.

01:38PM 6 THE COURT: EXCUSED BY THE STATE? BY THE

01:38PM 7 RESPONDENT?

01:38PM 8 MS. MIRANDA: YES, YOUR HONOR.

01:38PM 9 THE COURT: OKAY. ALL RIGHT.

01:38PM 10 THANK YOU, MR. SANDS.

01:38PM 11 THE WITNESS: AM I EXCUSED, YOUR HONOR?

01:38PM 12 THE COURT: YEAH, YOU ARE FREE TO GO IF YOU WANT TO.

01:38PM 13 THE WITNESS: THANK YOU, YOUR HONOR.

01:38PM 14 THE COURT: ALL RIGHT.

01:38PM 15 MR. ELLIS, WHO IS NEXT? YOU ARE GOING TO HAVE TO

01:38PM 16 USE A MIKE WHEN YOU ARE STANDING THERE AT THE TABLE. YOU CAN

01:38PM 17 JUST HOLD IT TO YOUR MOUTH AND SPEAK INTO IT, YOU DON'T

01:38PM 18 NECESSARILY HAVE TO PUT IT OVER YOUR EAR.

01:39PM 19 MR. ELLIS: YOUR HONOR, THE NEXT WITNESS, WE WOULD

01:39PM 20 CALL RONALD FERGUSON.

01:39PM 21 MS. MIRANDA: YOUR HONOR, I DON'T KNOW IF THIS IS

01:39PM 22 PREMATURE, BUT BASED ON THE PRETRIAL WITNESS STATEMENT THAT WE

01:39PM 23 SUBMITTED, IT WOULD APPEAR THAT MR. FERGUSON'S TESTIMONY IS

01:39PM 24 ALL ABOUT THE EFFORT THAT COUNSEL MADE TO PROPOSE SOME OF THIS

01:39PM 25 EVIDENCE THAT WE'RE NOW HEARING. AND AGAIN, WE RE-URGE OUR

01:39PM 1 OBJECTION THAT THAT IS COMPLETELY IRRELEVANT TO THIS HEARING.

01:39PM 2 THE COURT: DO WE HAVE A SUMMARY OF HIS TESTIMONY IN
01:39PM 3 HERE?

01:39PM 4 MS. MIRANDA: YES. I BELIEVE IT'S ONE OF THE FIRST
01:39PM 5 ONES, EITHER A OR B.

01:39PM 6 MR. ELLIS: IT IS A, YOUR HONOR.

01:39PM 7 THE COURT: ALL RIGHT. LET ME LOOK AT IT.

01:39PM 8 OKAY. SO MR. FERGUSON WOULD TESTIFY AS TO THE TRIAL
01:39PM 9 COURT'S RULINGS, BASICALLY?

01:40PM 10 MR. ELLIS: YES, YOUR HONOR. AND, ALSO, IN LIGHT OF
01:40PM 11 THIS MORNING'S TESTIMONY, HE WOULD ALSO BE TESTIFYING AS TO HIS
01:40PM 12 PERCEPTIONS OF THE STATE'S THEORY OF THE CASE AND THE PART IN
01:40PM 13 WHICH STRANGULATION PLAYED IN THAT CASE.

01:40PM 14 MS. MIRANDA: AGAIN, YOUR HONOR--

01:40PM 15 THE COURT: BOTH SIDES HAVE AGREED THAT STRANGULATION
01:40PM 16 WAS NOT INVOLVED HERE.

01:40PM 17 MR. ELLIS: CORRECT, YOUR HONOR. AND IF
01:40PM 18 STRANGULATION WAS A MAJOR PART OF THE STATE'S CASE AT TRIAL,
01:40PM 19 THEN THIS HAS A DIRECT BEARING ON MR. ACKER'S ACTUAL-INNOCENCE
01:40PM 20 CLAIM, YOUR HONOR, BECAUSE IF THE STATE'S THEORY--WHICH IT
01:40PM 21 WAS--WAS THAT FIRST THE VICTIM WAS STRANGLED TO DEATH AND
01:40PM 22 THEN, AND ONLY THEN, BLUNT-FORCE INJURIES OCCURRED, THEN THIS,
01:40PM 23 OF COURSE, HAS A GREAT IMPACT ON HOW--WHAT WE ARE LEFT WITH,
01:40PM 24 WHICH IS BLUNT-FORCE INJURIES. IN OTHER WORDS, THE JURY
01:40PM 25 CONSIDERED BLUNT-FORCE INJURIES ONLY IN THE CONTEXT OF A DEATH

01:41PM 1 FROM STRANGULATION OCCURRING FIRST. AND SO WE WOULD NEED
01:41PM 2 MR. FERGUSON TO GIVE HIS VIEWPOINT ON THAT THAT WAS THE STATE'S
01:41PM 3 THEORY OF THE CASE.

01:41PM 4 THE COURT: WAIT A MINUTE. I HAD THE INDICTMENT
01:41PM 5 HERE SOMEWHERE. HERE IT IS. THE INDICTMENT ALLEGES THAT
01:41PM 6 MR. ACKER CAUSED THE DEATH OF MARQUETTA GEORGE BY HOMICIDAL
01:41PM 7 VIOLENCE, TO-WIT, MANUAL STRANGULATION, SO FORTH AND SO ON,
01:41PM 8 AND BLUNT-FORCE INJURY.

01:41PM 9 MR. ELLIS: THAT'S CORRECT, YOUR HONOR. IT SAYS
01:41PM 10 "AND" AND NOT "OR."

01:41PM 11 THE COURT: YES, IT DOES. IT'S PLED IN THE
01:41PM 12 CONJUNCTIVE. COULD THE JURY, UNDER TEXAS LAW, FIND ONE OR THE
01:41PM 13 OTHER, THOUGH, EVEN THOUGH IT'S PLED IN THE CONJUNCTIVE? HAVE
01:42PM 14 YOU-ALL RESEARCHED THAT?

01:42PM 15 MS. MIRANDA: NO, YOUR HONOR. WE WERE GOING OFF
01:42PM 16 THE JURY CHARGE, WHAT WAS SUBMITTED TO THE JURY. THE OPTIONS
01:42PM 17 THAT THE JURY HAD, GIVEN BY THE TRIAL COURT, WERE TO FIND
01:42PM 18 EITHER STRANGULATION, BLUNT-FORCE INJURY, OR A COMBINATION OF
01:42PM 19 THE TWO. THERE WERE THREE OPTIONS THAT WERE GIVEN TO THEM.

01:42PM 20 THE COURT: SOMETHING TELLS ME THE GENERAL RULE ON
01:42PM 21 INDICTMENTS IS THAT YOU MUST PLEAD IN THE CONJUNCTIVE, BUT
01:42PM 22 THE JURY CAN FIND IN THE DISJUNCTIVE--COULD FIND EITHER/OR
01:42PM 23 STRANGULATION AND/OR BLUNT FORCE. SO I NEED TO LOOK AT THE
01:42PM 24 JURY INSTRUCTIONS. MS. MIRANDA, WHAT PAGE WOULD THAT BE ON?

01:42PM 25 MS. MIRANDA: OKAY. THAT IS GOING TO BE--I HAVE

01:42PM 1 THAT. IT'S ON PAGE 589 OF THE CLERK'S RECORD. I HAVE A COPY
01:43PM 2 OF IT HANDY IF YOU WOULD LIKE TO SEE IT.

01:43PM 3 THE COURT: YEAH. I HAVE THE ENTIRE JURY CHARGE
01:43PM 4 HERE.

01:43PM 5 MS. MIRANDA: OH, YOU'RE SPEAKING OF THE JURY CHARGE?
01:43PM 6 IS THAT WHAT YOU ARE ASKING?

01:43PM 7 THE COURT: ISN'T THAT WHAT YOU WERE REFERRING TO?

01:43PM 8 MS. MIRANDA: YES. I BELIEVE IT'S ON--

01:43PM 9 THE COURT: LOOKS LIKE IT'S ON PAGE 2. OR THAT'S
01:43PM 10 WHERE IT STARTS.

01:43PM 11 MS. MIRANDA: YES.

01:43PM 12 THE COURT: SO GIVE ME JUST A MINUTE TO LOOK AT
01:43PM 13 THIS.

01:46PM 14 OKAY, I'VE LOOKED AT PAGES 2, 3, AND THE TOP OF PAGE
01:46PM 15 4 OF THE JURY CHARGE. YES, THE INDICTMENT PLEADS STRANGULATION
01:46PM 16 AND BLUNT FORCE IN THE CONJUNCTIVE. HOWEVER, THE JUDGE CLEARLY
01:46PM 17 INSTRUCTS THE JURY THAT THEY CAN FIND MR. ACKER GUILTY IF THEY
01:46PM 18 FIND THAT HE CAUSED THE DEATH OF MARQUETTA GEORGE BY
01:46PM 19 STRANGULATION OR BLUNT-FORCE INJURY RESULTING FROM CAUSING HER
01:47PM 20 TO IMPACT A BLUNT OBJECT, OR A COMBINATION OF STRANGULATION AND
01:47PM 21 BLUNT-FORCE INJURY.

01:47PM 22 AND THEN THERE ARE MORE PARAGRAPHS THAT MAKE THAT
01:47PM 23 EXPLICIT TO THE JURY, THAT THEIR OPTIONS ARE EITHER
01:47PM 24 STRANGULATION--THAT MR. ACKER CAUSED HER DEATH BY EITHER
01:47PM 25 STRANGULATION, BLUNT-FORCE INJURY RESULTING FROM CAUSING

01:47PM 1 HER TO IMPACT A BLUNT OBJECT, OR BOTH. SO I THINK THOSE
01:47PM 2 WERE THE OPTIONS THE JURY HAD.

01:47PM 3 MR. ELLIS: THAT'S CORRECT, YOUR HONOR. AND I THINK
01:47PM 4 THIS GETS US INTO THE AREA OF WHY PERHAPS A POST-HEARING BRIEF
01:47PM 5 MIGHT BE A GOOD IDEA HERE, BECAUSE WE DON'T KNOW WHETHER THE
01:47PM 6 JURY SIMPLY LOOKED AT STRANGULATION ALONE, WHICH NOW THE STATE
01:47PM 7 HAS CONCEDED IS NOT TRUE, AND THEN WENT AND RENDERED THE
01:47PM 8 VERDICT ON A FALSE THEORY.

01:47PM 9 THE COURT: I DON'T NEED TO KNOW WHAT THE JURY
01:47PM 10 LOOKED AT. I SIMPLY NEED TO KNOW WHETHER--AND THE TEST IS
01:48PM 11 WHETHER IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR
01:48PM 12 WOULD HAVE FOUND MR. ACKER GUILTY BEYOND A REASONABLE DOUBT.
01:48PM 13 THAT'S THE TEST--

01:48PM 14 MR. ELLIS: YES.

01:48PM 15 THE COURT: --UNDER HOUSE.

01:48PM 16 MR. ELLIS: YES, ABSOLUTELY. AND THAT'S WHY I THINK
01:48PM 17 WE NEED MR. FERGUSON, TO SHOW THAT, EVEN THOUGH TECHNICALLY THE
01:48PM 18 JURY MAY HAVE BEEN ABLE--UNDER ONE OF THOSE THREE ALTERNATIVES
01:48PM 19 THAT THE COURT JUST OUTLINED--TO HAVE RENDERED A VERDICT ON ONE
01:48PM 20 OF THOSE, THE WHOLE GIST OF THE TRIAL, THE WEIGHT OF THE
01:48PM 21 EVIDENCE HERE, THE INDICTMENT, THE ARGUMENTS, THE OPENING
01:48PM 22 STATEMENTS, THE CLOSING STATEMENTS, THE CROSS-EXAMINATION,
01:48PM 23 DR. GONSOULIN'S DIRECT, THE CASE ON APPEAL, ALL GO TO
01:48PM 24 STRANGULATION, STRANGULATION, STRANGULATION. AND THIS IS--THIS
01:48PM 25 WAS--THIS FIGURED THROUGHOUT THE TRIAL. THIS IS WHAT-- THIS IS

01:48PM 1 WHY MR. FERGUSON'S TESTIMONY, I THINK, WOULD BE HIGHLY
01:49PM 2 PROBATIVE HERE TO SHOW THAT THE STATE NEVER HAD A STAND-ALONE
01:49PM 3 BLUNT-FORCE THEORY OF THE CASE. THEIR THEORY WAS DEATH BY
01:49PM 4 STRANGULATION AND THEN THE BLUNT-FORCE INJURIES OCCURRED.
01:49PM 5 AND OUR POINT IS THAT A REASONABLE JUROR, IF YOU EXCISE THE
01:49PM 6 STRANGULATION--

01:49PM 7 THE COURT: WELL, YOU ARE ARGUING THAT THAT WAS
01:49PM 8 THEIR ONLY THEORY. MS. MIRANDA MAY HAVE A DIFFERENT OPINION
01:49PM 9 ABOUT THAT, I DON'T KNOW.

01:49PM 10 WHAT IS YOUR OPINION?

01:49PM 11 MS. MIRANDA: MY OPINION IS THAT WHAT THE STATE'S
01:49PM 12 THEORY WAS AT TRIAL IS IRRELEVANT TO THIS COURT'S DETERMINATION.
01:49PM 13 THIS COURT, IN DETERMINING ACTUAL INNOCENCE, SIMPLY LOOKS AT
01:49PM 14 THE EVIDENCE THAT IS AVAILABLE TO DETERMINE EXACTLY THAT,
01:49PM 15 WHETHER MORE LIKELY THAN NOT NO REASONABLE--I ALWAYS TRY TO
01:49PM 16 TURN IT AROUND WITH A DOUBLE NEGATIVE. IF A REASONABLE JUROR
01:49PM 17 COULD HAVE FOUND HIM GUILTY BEYOND A REASONABLE DOUBT, THEN
01:49PM 18 HE HAS NOT PROVEN ACTUAL INNOCENCE. IT HAS NOTHING TO DO
01:49PM 19 WITH WHAT THAT JURY CONSIDERED, HOW THEY DELIBERATED. IT HAS
01:49PM 20 EVERYTHING TO DO WITH WHAT IS THE STATE OF THE EVIDENCE NOW,
01:50PM 21 WHAT DO WE KNOW NOW, AND GIVEN WHAT WE KNOW NOW, WHAT WOULD A
01:50PM 22 REASONABLE JUROR--

01:50PM 23 THE COURT: THAT APPEARS TO BE THE TEST UNDER HOUSE.
01:50PM 24 I THINK MS. MIRANDA IS CORRECT.

01:50PM 25 MR. ELLIS: WELL, YES, YOUR HONOR, BUT WE HAVE A

01:50PM 1 CASE HERE THAT WAS DECIDED BY THE COURT OF CRIMINAL APPEALS
01:50PM 2 UNDER A FALSE THEORY. AND I WOULD LIKE TO BRIEFLY QUOTE FROM
01:50PM 3 ACKER VERSUS STATE, NUMBER 74,109, AT STAR 4 AND STAR 5, WHERE
01:50PM 4 THE CCA HELD, "SOME INJURIES, PARTICULARLY THOSE OF THE NECK
01:50PM 5 AND PERINEUM, ARE NOT CONSISTENT WITH EJECTION FROM OR IMPACT
01:50PM 6 WITH A VEHICLE. THE INJURIES OBSERVED IN THE NECK ARE MORE
01:50PM 7 CONSISTENT WITH STRANGULATION." AND THEY GO ON: "GIVEN THESE
01:50PM 8 FINDINGS, IT IS LIKELY THAT THE DECEDENT WAS STRANGLED AND
01:50PM 9 PROBABLY DEAD OR NEAR DEAD PRIOR TO BEING DUMPED FROM THE
01:50PM 10 VEHICLE." AND WE KNOW THAT'S WRONG. SO HOW CAN WE JUST
01:50PM 11 IGNORE THAT HOLDING BY THE CCA UNDER WHICH MR. ACKER WAS--

01:50PM 12 THE COURT: THAT MAY BE RELEVANT TO ANOTHER ONE OF
01:50PM 13 YOUR CLAIMS, BUT I'M LOOKING AT YOUR ACTUAL-INNOCENCE CLAIM.
01:51PM 14 BECAUSE ONLY THROUGH THAT CLAIM DO I REACH THE PROCEDURALLY
01:51PM 15 BARRED CLAIMS. AND UNDER THE HOUSE CASE, DECIDED BY THE U.S.
01:51PM 16 SUPREME COURT, WHICH IS WHAT GOVERNS MY ACTIONS, IT SAYS,
01:51PM 17 "THE HABEAS COURT MUST CONSIDER ALL THE EVIDENCE, OLD AND NEW.
01:51PM 18 BASED ON THIS TOTAL RECORD, THE COURT MUST MAKE A PROBABILISTIC
01:51PM 19 DETERMINATION ABOUT WHAT REASONABLE, PROPERLY INSTRUCTED JURORS
01:51PM 20 WOULD DO." I KNOW HOW THE JURORS WERE INSTRUCTED. I SIMPLY
01:51PM 21 NEED TO PUT MYSELF IN THE POSITION OF A REASONABLE JUROR.

01:51PM 22 MR. ELLIS: ABSOLUTELY.

01:51PM 23 THE COURT: SO I DON'T BELIEVE I DO NEED TO HEAR
01:51PM 24 WHETHER--LET'S SEE--WHETHER THERE WAS FUNDING FOR EXPERTS,
01:51PM 25 WHETHER THERE WAS A REFUSAL TO ALLOW MR. SANDS TO TESTIFY,

01:51PM 1 WHETHER EFFORTS TO DISPROVE OR DISCREDIT THE STATE'S THEORY
01:51PM 2 WERE ALLOWED BY THE TRIAL JUDGE. I DON'T THINK I NEED TO LOOK
01:51PM 3 AT THAT. I LOOK AT THE TOTAL RECORD, INCLUDING WHAT BOTH OF
01:52PM 4 YOU ARE GOING TO PRESENT TO ME HERE, AND THEN MAKE THAT
01:52PM 5 PROBABILISTIC DETERMINATION.

01:52PM 6 MR. ELLIS: WHAT ABOUT MR. FERGUSON'S TESTIMONY AS
01:52PM 7 TO THE STATE'S THEORY AT THE TRIAL? IS THAT UNDER THE SAME
01:52PM 8 RUBRIC AS...

01:52PM 9 THE COURT: WELL, WHATEVER THEIR THEORY WAS, I DO--
01:52PM 10 I DO KNOW WHAT THE JURY WAS CHARGED ON. SO I HAVE THOSE THREE
01:52PM 11 ALTERNATIVES THAT I DO NEED TO LOOK AT BASED ON ALL THE
01:52PM 12 EVIDENCE THAT I'LL HAVE AFTER WE FINISH THIS HEARING. AND SO
01:52PM 13 WHETHER THAT WAS THE STATE'S THEORY OR NOT, I DON'T KNOW WHAT
01:52PM 14 OTHER CLAIMS IT MIGHT BE RELEVANT TO, BUT I DON'T KNOW THAT
01:52PM 15 IT'S RELEVANT TO AN ACTUAL-INNOCENCE CLAIM.

01:52PM 16 MS. MIRANDA: NOT ONLY THAT, YOUR HONOR, I THINK THE
01:52PM 17 RECORD SPEAKS FOR ITSELF AS FAR AS WHAT THE STATE'S THEORY WAS.
01:52PM 18 I THINK IT'S CLEAR FROM LOOKING AT THE RECORD THE THEORY THAT
01:52PM 19 THE STATE WAS PURSUING. SO I'M NOT SURE THAT MR. FERGUSON
01:52PM 20 NEEDS TO COME IN AND--

01:53PM 21 THE COURT: YOU HAVING LOOKED AT THE RECORD, WHAT
01:53PM 22 IS YOUR OPINION ABOUT WHAT THE STATE'S THEORY WAS?

01:53PM 23 MS. MIRANDA: I THINK IT'S IMPOSSIBLE TO SAY THAT IT
01:53PM 24 WAS NOT STRANGULATION. OBVIOUSLY STRANGULATION WAS A HUGE PART
01:53PM 25 OF THEIR CASE, IT'S SOMETHING THEY ASSERTED THROUGHOUT THE

01:53PM 1 EVIDENCE, IT'S SOMETHING THEY ARGUED. BUT AGAIN I POINT OUT
01:53PM 2 THEY ALSO--THE PROSECUTOR ALSO ASSURED THE JURY IN THEIR
01:53PM 3 ARGUMENT THAT THEY COULD DO IT ON EITHER THREE, ALTHOUGH
01:53PM 4 STRANGULATION WAS A HUGE PART OF IT, SO I'M NOT GOING TO
01:53PM 5 DISAGREE WITH THAT.

01:53PM 6 THE COURT: BUT UNLESS I'VE MISSED SOMETHING, IT
01:53PM 7 LOOKS LIKE UNDER THE HOUSE CASE I'M LOOKING AT THE EVIDENCE IN
01:53PM 8 THIS CASE IN THE ABSTRACT. I'M NOT LOOKING AT NECESSARILY WHAT
01:53PM 9 WAS ARGUED AT THE TRIAL COURT OR WHAT THEORY EITHER SIDE HAD;
01:53PM 10 I'M SIMPLY LOOKING AT THE EVIDENCE THAT WAS PRESENTED THERE
01:53PM 11 PLUS THE EVIDENCE YOU ARE GOING TO PRESENT TO ME HERE.

01:53PM 12 MR. ELLIS: FINE.

01:53PM 13 THE COURT: AND THEN I PUT MYSELF IN THE PLACE OF A
01:53PM 14 REASONABLE JUROR.

01:53PM 15 MR. ELLIS: OKAY. WELL, I GUESS THE COURT WOULD
01:53PM 16 HAVE TO MAKE A RULING--

01:53PM 17 THE COURT: I DON'T MIND HEARING FROM MR. FERGUSON.
01:54PM 18 PROBABLY HE CAME HERE TO TESTIFY. BUT UNLESS HE HAS SOMETHING
01:54PM 19 RELEVANT TO THIS ISSUE ON ACTUAL INNOCENCE, I'D RATHER MOVE ON.

01:54PM 20 MR. ELLIS: OKAY. I THINK WE CAN MOVE ON THEN, YOUR
01:54PM 21 HONOR.

01:54PM 22 THE COURT: OKAY. WHO WOULD BE NEXT?

01:54PM 23 MR. ELLIS: YOUR HONOR, I HAVE SABRINA BALL UNDER
01:54PM 24 SUBPOENA. I DON'T KNOW IF SHE'S HERE.

01:54PM 25 THE COURT: OKAY. LET'S SEE IF WE CAN GET HER IN

01:54PM 1 HERE.

01:55PM 2 YOU NEED TO STAND IN FRONT OF THIS LADY HERE. GO
01:55PM 3 AHEAD AND RAISE YOUR RIGHT HAND.

01:55PM 4 DEPUTY COURT CLERK: DO YOU SWEAR THE TESTIMONY YOU
01:55PM 5 SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE THE TRUTH, THE
01:55PM 6 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

01:55PM 7 THE WITNESS: I DO.

01:55PM 8 THE COURT: OKAY. COME AROUND AND HAVE A SEAT.
01:55PM 9 HOW ARE YOU TODAY?

01:55PM 10 THE WITNESS: I'M GOOD.

01:55PM 11 THE COURT: ALL RIGHT.

01:55PM 12 DIRECT EXAMINATION OF SABRINA BALL ON BEHALF OF THE PETITIONER

01:55PM 13 MR. ELLIS:

01:55PM 14 Q. MS. BALL, COULD YOU STATE AND SPELL YOUR NAME FOR THE
01:55PM 15 RECORD, PLEASE.

01:55PM 16 A. SABRINA BALL. FIRST NAME S-A-B-R-I-N-A, LAST NAME
01:56PM 17 BALL, B-A-L-L.

01:56PM 18 Q. AND WHERE DO YOU LIVE RIGHT NOW?

01:56PM 19 A. I LIVE AT 256 COUNTY ROAD 2450, SULPHUR SPRINGS, TEXAS.

01:56PM 20 Q. AND DO YOU KNOW DANIEL ACKER?

01:56PM 21 A. I KNOW OF HIM. I DON'T KNOW HIM PERSONALLY.

01:56PM 22 Q. OKAY. AND IS HE THE GENTLEMAN SEATED AT THE TABLE ON
01:56PM 23 THE LEFT HERE?

01:56PM 24 A. YES.

01:56PM 25 Q. AND HOW DO YOU--HOW DID YOU COME TO KNOW HIM?

01:56PM 1 A. ACTUALLY, I'M JUST AWARE OF THE CASE. HIS MOTHER DOES
01:56PM 2 LIVE DOWN THE ROAD TWO DOORS DOWN FROM ME, SO THAT'S HOW I KNOW
01:56PM 3 THE FAMILY. OR KNOW OF THEM.

01:56PM 4 Q. SO YOU ARE ACQUAINTED WITH HIM THROUGH HIS MOTHER,
01:56PM 5 NANCY ACKER, IS THAT CORRECT?

01:56PM 6 A. NOT AN ACQUAINTANCE. JUST KNOW THAT THEY LIVE TWO
01:56PM 7 DOORS DOWN.

01:56PM 8 Q. DID YOU KNOW MARKIE GEORGE ALSO?

01:56PM 9 A. NO.

01:56PM 10 Q. AND DO YOU REMEMBER AN INCIDENT IN LATE FEBRUARY OF THE
01:56PM 11 YEAR 2000, TWO WEEKS BEFORE MS. GEORGE'S DEATH, WHEN MS. GEORGE
01:57PM 12 CAME TO YOUR DOOR LATE AT NIGHT?

01:57PM 13 A. YES.

01:57PM 14 Q. AND WHAT WAS SHE SAYING?

01:57PM 15 A. SHE WAS REALLY SCARED AND UPSET, OR APPEARED TO BE
01:57PM 16 SCARED AND UPSET AT THE TIME, CRYING, AND SHE TOLD ME THAT
01:57PM 17 SHE WAS AFRAID THAT HE WAS GOING TO KILL HER AND THAT SHE--

01:57PM 18 Q. EXCUSE ME. LET ME STOP YOU THERE. WHO IS THE "HE"
01:57PM 19 THAT YOU ARE REFERRING TO?

01:57PM 20 A. MR. ACKER. DURING THEIR FIGHT, SHE WAS SCARED AND WAS
01:57PM 21 AFRAID THAT HE WAS GOING TO HURT HER.

01:57PM 22 Q. AND WAS SHE--WAS HER DEMEANOR SUCH THAT SHE WAS CRYING
01:57PM 23 ALSO?

01:57PM 24 A. YES. ACTUALLY, WHEN I FIRST OPENED THE DOOR, SHE WAS
01:57PM 25 DOWN ON THE GROUND.

01:57PM 1 Q. OKAY. AND WHAT DID YOU DO?

01:57PM 2 A. I SPOKE WITH HER FOR A WHILE. OF COURSE, IT'S THE
01:57PM 3 MIDDLE--OR LATE AT NIGHT. SO YOU WOULD LIKE TO KNOW WHAT'S
01:57PM 4 GOING ON BEFORE YOU LET SOMEONE IN. SO I TALKED WITH HER A
01:57PM 5 WHILE. AND SHE PROCEEDED TO TELL ME ABOUT WHAT HAD HAPPENED
01:58PM 6 AND HOW SHE HAD--THEY ENDED UP HAVING AN ARGUMENT AFTER THEY
01:58PM 7 LEFT "BUSTIN LOOSE."

01:58PM 8 Q. AND WHAT HAD HAPPENED? YOU SAID THEY WERE AT "BUSTIN
01:58PM 9 LOOSE"?

01:58PM 10 A. THAT'S WHAT SHE HAD TOLD ME. SHE SAID THAT THEY HAD
01:58PM 11 GOTTEN IN AN ARGUMENT, LEFT, WERE GOING DOWN THE HIGHWAY, AND
01:58PM 12 THAT HE WAS BEATING HER HEAD AGAINST THE DASH; THAT SHE TRIED
01:58PM 13 TO JUMP OUT, AND THEN HE GRABBED HER BY THE HAIR OF THE HEAD
01:58PM 14 AND PULLED HER BACK IN.

01:58PM 15 Q. AND SO HE--SHE TOLD YOU--THIS IS MS. GEORGE TELLING YOU
01:58PM 16 THIS. CORRECT?

01:58PM 17 A. THAT'S CORRECT.

01:58PM 18 Q. AND SHE SAID THAT SHE DID TRY TO JUMP OUT OF THE TRUCK,
01:58PM 19 IS THAT CORRECT?

01:58PM 20 A. SHE DID.

01:58PM 21 Q. AND DID YOU CALL THE POLICE AS A RESULT OF THIS
01:58PM 22 INCIDENT?

01:58PM 23 A. EITHER I OR MY HUSBAND. ONE OF US DID.

01:59PM 24 Q. OKAY. DO YOU REMEMBER GIVING A STATEMENT TO THE POLICE
01:59PM 25 OFFICER?

01:59PM 1 A. I THINK I DO.

01:59PM 2 Q. DO YOU REMEMBER WHICH OFFICER--OFFICE IT WAS? WAS IT
01:59PM 3 SHERIFF OR--

01:59PM 4 A. IT WOULD HAVE BEEN THE SHERIFFS, YES.

01:59PM 5 MR. ELLIS: MAY I APPROACH, YOUR HONOR?

01:59PM 6 THE COURT: YES.

01:59PM 7 MR. ELLIS:

01:59PM 8 Q. MS. BALL, I SHOW YOU--I GAVE YOU A THREE-PAGE STATEMENT
01:59PM 9 HERE. IS THAT YOUR SIGNATURE ON THE BOTTOM OF IT?

01:59PM 10 A. YES, IT IS.

01:59PM 11 Q. AND IS THAT YOUR HANDWRITING? OR IS THAT THE SHERIFF'S
01:59PM 12 HANDWRITING?

02:00PM 13 A. IT WOULD BE MINE.

02:00PM 14 Q. SO YOU WROTE OUT THIS THREE-PAGE STATEMENT, IS THAT
02:00PM 15 CORRECT?

02:00PM 16 A. I DID.

02:00PM 17 Q. AND ON THE FIRST PAGE YOU WROTE THAT SHE TOLD YOU, "WE
02:00PM 18 WERE IN THE TRUCK, HE WAS BEATING MY HEAD AGAINST THE DASH. I
02:00PM 19 TRIED TO JUMP OUT, BUT HE PULLED ME BACK IN." IS THAT CORRECT?

02:00PM 20 A. YES.

02:00PM 21 MR. ELLIS: YOUR HONOR, WE WOULD OFFER THIS AS
02:00PM 22 PETITIONER'S EXHIBIT 7, I BELIEVE. I'VE LOST COUNT.

02:00PM 23 THE COURT: IS THERE A 6?

02:00PM 24 MR. ELLIS: OR 6 MAYBE. I'VE LOST COUNT. I'M
02:00PM 25 SORRY, YOUR HONOR.

02:00PM 1 THE COURT: OKAY. THIS IS GOING TO BE PETITIONER'S
02:00PM 2 EXHIBIT 6.

02:00PM 3 MS. KUYKENDALL: NO OBJECTION, YOUR HONOR.

02:00PM 4 THE COURT: OKAY. TELL ME AGAIN WHAT IT IS.

02:01PM 5 MR. ELLIS: THIS IS A THREE-PAGE WRITTEN STATEMENT
02:01PM 6 BY MS. BALL, IN HER OWN HANDWRITING, THAT SHE GAVE TO THE
02:01PM 7 HOPKINS COUNTY SHERIFF'S OFFICE REGARDING AN INCIDENT THAT
02:01PM 8 OCCURRED ON FEBRUARY 26TH, 2000, WHICH IS TWO WEEKS PRIOR TO
02:01PM 9 MS. GEORGE'S DEATH.

02:01PM 10 THE COURT: OKAY. COULD YOU LEAVE IT THERE JUST FOR
02:01PM 11 A MOMENT. OH, YOU SAY IT'S THREE PAGES?

02:01PM 12 MR. ELLIS: THREE PAGES, THAT'S CORRECT, YOUR HONOR.

02:01PM 13 THE COURT: OKAY. I'LL ADMIT PETITIONER'S EXHIBIT
02:01PM 14 6.

02:01PM 15 MR. ELLIS: I HAVE AN EXTRA COPY IF THE COURT--

02:01PM 16 THE COURT: I DO NEED A COPY FOR THE RECORD, YES.
02:01PM 17 OKAY.

02:02PM 18 MR. ELLIS: HAS THE COURT HAD AN OPPORTUNITY TO
02:02PM 19 REVIEW IT?

02:02PM 20 THE COURT: NO, I HAVEN'T READ THE WHOLE THING.
02:02PM 21 I DIDN'T KNOW WHETHER YOU WERE GOING TO GO FORWARD WITH
02:02PM 22 QUESTIONS.

02:02PM 23 MR. ELLIS: I WOULD JUST OFFER IT. HAS IT BEEN
02:02PM 24 RECEIVED, YOUR HONOR?

02:02PM 25 THE COURT: YES, I'VE ADMITTED PETITIONER'S EXHIBIT

02:02PM 1 6, WHICH IS MS. BALL'S STATEMENT. I'LL TAKE A LOOK AT IT RIGHT
02:02PM 2 NOW.

02:02PM 3 MR. ELLIS:

02:02PM 4 Q. DO YOU REMEMBER THE OFFICER THAT YOU MADE THE STATEMENT
02:02PM 5 TO, MS. BALL?

02:02PM 6 A. NO.

02:02PM 7 MR. ELLIS: I'D HAVE NO FURTHER QUESTIONS.

02:02PM 8 THE COURT: ALL RIGHT.

02:03PM 9 WAIT A MINUTE, MS. BALL. I DON'T KNOW IF THE OTHER
02:03PM 10 LAWYER DOES.

02:03PM 11 THE WITNESS: SORRY.

02:03PM 12 THE COURT: OKAY.

02:03PM 13 MS. KUYKENDALL?

02:03PM 14 MS. KUYKENDALL: THANK YOU, YOUR HONOR. I BELIEVE
02:03PM 15 MS. MIRANDA MADE MY ANNOUNCEMENT FOR ME THIS MORNING, BUT
02:03PM 16 HELLO, NICE TO BE BEFORE YOU.

02:03PM 17 CROSS-EXAMINATION OF SABRINA BALL ON BEHALF OF THE RESPONDENT

02:03PM 18 MS. KUYKENDALL: MS. BALL, MY NAME IS LESLIE
02:03PM 19 KUYKENDALL. I'M AN ASSISTANT ATTORNEY GENERAL AND I REPRESENT
02:03PM 20 DIRECTOR THALER. I JUST HAVE A FEW QUESTIONS FOR YOU.

02:03PM 21 Q. FIRST OF ALL, YOU WERE NOT IN THE CAR WHEN MR. ACKER
02:03PM 22 AND MARKIE WERE HEADING AWAY FROM "BUSTIN LOOSE" BACK TO
02:03PM 23 MS. ACKER'S HOUSE?

02:03PM 24 A. NO.

02:03PM 25 Q. OKAY.

02:03PM 1 A. I WAS NOT.

02:03PM 2 Q. OKAY. YOU WEREN'T OTHERWISE OBSERVING THE CAR, WERE
02:03PM 3 YOU?

02:03PM 4 A. NO.

02:03PM 5 Q. OKAY. SO YOU HAD REALLY NO IDEA WHETHER SHE JUMPED
02:03PM 6 OR TRIED TO JUMP OUT OF THE CAR OR NOT, ISN'T THAT CORRECT?

02:03PM 7 A. CORRECT.

02:03PM 8 Q. OKAY.

02:03PM 9 AFTER THAT POINT, DID YOU SEE MS. GEORGE FROM THAT
02:04PM 10 NIGHT--BETWEEN THAT NIGHT AND THE TIME OF HER DEATH?

02:04PM 11 A. NO.

02:04PM 12 Q. OKAY.

02:04PM 13 A. I DID NOT.

02:04PM 14 Q. ALL RIGHT. SO YOU WERE NOT WITH HER AT ANY POINT ON
02:04PM 15 THE DAY THAT SHE DIED?

02:04PM 16 A. NO.

02:04PM 17 Q. OKAY. AND WOULD IT BE RIGHT FOR ME TO ASSUME THAT
02:04PM 18 MR. ACKER--THAT YOU WERE NOT--DID NOT HAVE ANY CONTACT WITH
02:04PM 19 MR. ACKER ON THE DAY THAT MARKIE DIED?

02:04PM 20 A. NO, I DID NOT.

02:04PM 21 Q. OKAY. SO YOU HAVE NO PERSONAL KNOWLEDGE OF HOW SHE
02:04PM 22 DIED?

02:04PM 23 A. RIGHT.

02:04PM 24 Q. OKAY. AND SO IF YOU HAVE NO PERSONAL KNOWLEDGE OF HOW
02:04PM 25 SHE DIED, YOU CERTAINLY DO NOT KNOW WHETHER SHE JUMPED OUT OF A

02:04PM 1 TRUCK THAT DAY?

02:04PM 2 A. RIGHT.

02:04PM 3 MS. KUYKENDALL: OKAY. THANK YOU.

02:04PM 4 I PASS THE WITNESS.

02:04PM 5 THE COURT: DO YOU HAVE ANY OTHER QUESTIONS,
02:04PM 6 MR. ELLIS?

02:04PM 7 MR. ELLIS: NO.

02:04PM 8 THE COURT: COULD YOU WAIT JUST A MINUTE, MS. BALL,
02:04PM 9 AND LET ME LOOK AT YOUR STATEMENT AND SEE IF I HAVE ANY
02:04PM 10 QUESTIONS FOR YOU.

02:06PM 11 OKAY, I'VE READ THE STATEMENT. I DON'T HAVE ANY
02:07PM 12 QUESTIONS. THANK YOU, MS. BALL.

02:07PM 13 THE WITNESS: DO YOU NEED THIS BACK? MY STATEMENT.

02:07PM 14 THE COURT: YEAH, IF YOU DON'T MIND.

02:07PM 15 THE WITNESS: SURE.

02:07PM 16 THE COURT: MR. ELLIS, WHO IS NEXT?

02:08PM 17 MR. ELLIS: WE CALL CHRISTOPHER HILL.

02:08PM 18 THE COURT: OKAY.

02:08PM 19 MR. ELLIS: YOUR HONOR, MR. HILL IS UNDER SUBPOENA,
02:08PM 20 SO I DON'T KNOW WHY HE'S NOT HERE.

02:08PM 21 THE COURT: IS HE NOT HERE? OKAY. LET'S SEE. I'VE
02:08PM 22 GOT TO LOOK THROUGH THE PRE-HEARING STATEMENT TO FIND HIM AND
02:08PM 23 SEE WHAT HE WAS GOING TO TESTIFY TO.

02:08PM 24 MR. ELLIS: PERHAPS WE COULD STIPULATE, YOUR HONOR,
02:08PM 25 BECAUSE IT IS BASED ON HIS TRIAL TESTIMONY AND IT IS IN SECTION

02:08PM 1 O OF THE JOINT PRE-HEARING STATEMENT.

02:09PM 2 THE COURT: IS HE STILL EMPLOYED BY THE HOPKINS
02:09PM 3 COUNTY SHERIFF'S OFFICE?

02:09PM 4 COURT SECURITY OFFICER: NO, SIR.

02:09PM 5 THE COURT: NO?

02:09PM 6 WAS HE SERVED WITH A SUBPOENA, MR. ELLIS? DO YOU
02:09PM 7 KNOW?

02:09PM 8 MR. ELLIS: I BELIEVE HE WAS, YOUR HONOR. I'M
02:09PM 9 TRYING TO CHECK MY SUBPOENA RETURNS HERE, BUT...

02:09PM 10 THE COURT: I CAN'T HEAR YOU.

02:09PM 11 MR. ELLIS: IF THE COURT COULD GIVE ME A MINUTE,
02:09PM 12 I'LL CHECK THE SUBPOENA RETURNS.

02:09PM 13 THE COURT: OKAY.

02:09PM 14 MR. ELLIS: YOUR HONOR, I DO NOT SEE A RETURN FROM
02:10PM 15 HIM, ALTHOUGH HE WAS SUBPOENAED. SO WE MAY HAVE HAD A BAD
02:10PM 16 ADDRESS.

02:10PM 17 THE COURT: OKAY.

02:10PM 18 MR. ELLIS: IN THAT CASE--

02:10PM 19 THE COURT: JUST A MOMENT.

02:10PM 20 [ADDRESSING THE COURT SECURITY OFFICER] DO YOU HAVE
02:10PM 21 INFORMATION ABOUT THIS?

02:10PM 22 [THE COURT SECURITY OFFICER APPROACHED THE BENCH AND
02:10PM 23 SPOKE TO THE JUDGE OFF THE RECORD.]

02:10PM 24 THE COURT: MR. ELLIS HAS SAID THAT WE DON'T HAVE
02:10PM 25 ANY PROOF THAT MR. HILL WAS SERVED. SO WHAT WOULD YOU LIKE TO

02:10PM 1 DO, MR. ELLIS?

02:10PM 2 MR. ELLIS: WELL, I WOULD LIKE TO, IN THE
02:10PM 3 ALTERNATIVE, ENTER INTO A STIPULATION. THE CONTENT OF THE
02:10PM 4 STIPULATION WOULD BE WHAT HE WAS EXPECTED TO TESTIFY TO,
02:10PM 5 AS STATED IN SECTION 0 OF THE JOINT PRE-HEARING STATEMENT.

02:10PM 6 THE COURT: ALL RIGHT.

02:11PM 7 MS. MIRANDA, ANY OBJECTION TO THAT STIPULATION? DO
02:11PM 8 YOU JOIN IN THAT STIPULATION?

02:11PM 9 MS. MIRANDA: ACTUALLY, YES. BUT THE FIRST PART OF
02:11PM 10 THE TESTIMONY THAT'S TAKEN STRAIGHT FROM WHAT HE DID TESTIFY
02:11PM 11 TO AT TRIAL, I HAVE NO PROBLEM TO, AND THAT WOULD BE THE FIRST
02:11PM 12 PARAGRAPH: "EXPECTED TO TESTIFY MARCH 12TH, 2000, HE RESPONDED
02:11PM 13 TO A REPORT OF A FEMALE LYING ON THE ROAD." THAT FIRST
02:11PM 14 PARAGRAPH, I DON'T OBJECT TO THE STIPULATION ON THAT.

02:11PM 15 BUT THE SECOND PART I DO. BECAUSE WE DON'T HAVE
02:11PM 16 ACTUAL CITES TO WHERE THAT'S ACTUALLY WHAT HE WOULD HAVE
02:11PM 17 TESTIFIED TO.

02:11PM 18 MR. ELLIS: YOUR HONOR, WE DO HAVE ACTUAL CITES.
02:11PM 19 IT'S 10 REPORTER'S RECORD, PAGE 42. AND THEN--I'M SORRY. I
02:11PM 20 THINK THAT'S PROBABLY AN ERROR. I THINK THAT'S VOLUME 20 OF
02:11PM 21 THE REPORTER'S RECORD, PAGE 42, AND VOLUME 20 OF THE REPORTER'S
02:11PM 22 RECORD, PAGE 43. SO THAT COMES STRAIGHT OUT OF HIS TRIAL
02:11PM 23 TESTIMONY. SO IT WOULD BE VOLUME 20 OF THE REPORTER'S RECORD,
02:12PM 24 PAGE 42 AND 43.

02:12PM 25 THE COURT: OKAY.

02:12PM 1 MS. MIRANDA, DO YOU STIPULATE TO THE SECOND PARAGRAPH
02:12PM 2 OR NOT?

02:12PM 3 MS. MIRANDA: NOT REALLY, YOUR HONOR. IT'S DOUBLE-
02:12PM 4 HEARSAY OFFERED TO IMPEACH A WITNESS THAT THEY ALSO SUBPOENAED.
02:12PM 5 AND I THINK THAT THE BEST EVIDENCE OF WHAT MS. SMIDDY'S
02:12PM 6 ORIGINAL STATEMENT IS IS TO HAVE HER--SINCE SHE'S UNDER
02:12PM 7 SUBPOENA, TO HAVE HER TESTIFY.

02:12PM 8 THE COURT: DOES IT MATTER WHETHER IT'S DOUBLE-
02:12PM 9 HEARSAY?

02:12PM 10 MS. MIRANDA: I DON'T THINK IT MATTERS WHETHER IT'S
02:12PM 11 DOUBLE-HEARSAY, BUT IT'S EVEN FURTHER REMOVED FROM EVERYTHING.
02:12PM 12 SO I JUST DON'T WANT TO STIPULATE TO IT.

02:12PM 13 MR. ELLIS: YOUR HONOR, FIRST OF ALL, IT'S IN THE
02:12PM 14 TRIAL RECORD.

02:12PM 15 SECONDLY--

02:12PM 16 THE COURT: I DON'T KNOW. YOU DON'T HAVE THE ENTIRE
02:12PM 17 PARAGRAPH IN QUOTES. THE ONLY PARTS THAT ARE IN QUOTES--

02:13PM 18 MR. ELLIS: I THINK WE MAY HAVE VOLUME 20 OF THE
02:13PM 19 REPORTER'S RECORD AROUND HERE SOMEWHERE.

02:13PM 20 THE PETITIONER: WE HAVE IT.

02:13PM 21 THE COURT: I'M GETTING A COPY OF VOLUME 20.

02:13PM 22 MR. ELLIS: I'VE LOCATED A COPY, YOUR HONOR.

02:13PM 23 THE COURT: OKAY.

02:13PM 24 MR. ELLIS: COURTESY OF MY CLIENT.

02:13PM 25 THE COURT: LET ME GET A COPY IN FRONT OF ME AND

02:13PM 1 THEN I CAN FOLLOW ALONG WITH WHAT YOU ARE READING. OKAY,
02:14PM 2 I HAVE VOLUME 20. I DON'T SEE A CHRISTOPHER HILL ON HERE.
02:14PM 3 THERE'S A MR. LONG AND MR. MCDOWELL TALKING TO EACH OTHER.

02:15PM 4 MR. ELLIS: IT COMES FROM A STATEMENT BY MR. MCDOWELL
02:15PM 5 THAT REFERS TO A SUPPLEMENTAL REPORT OF DEPUTY HILL, WHICH I
02:15PM 6 HAVE HERE ALSO. AND THAT'S WHAT HE'S REFERRING TO.

02:15PM 7 THE COURT: SO WHAT DO YOU WANT ME TO READ OR WHAT
02:15PM 8 DO YOU WANT TO READ?

02:15PM 9 MR. ELLIS: IT WOULD BE THAT--

02:15PM 10 THE COURT: WHAT LINE?

02:15PM 11 MR. ELLIS: PAGE 42, LINE--LINES 8, 9, 10 AND 11.

02:15PM 12 THE COURT: WHO IS THE COMPLAINANT?

02:15PM 13 MR. ELLIS: YOUR HONOR, THE COMPLAINANT WOULD BE,
02:15PM 14 I BELIEVE, MR. SMIDDY.

02:16PM 15 THE COURT: DOES THIS HAVE TO DO WITH THE MARCH 12TH
02:16PM 16 INCIDENT?

02:16PM 17 MR. ELLIS: THAT IS CORRECT, YOUR HONOR, YES.

02:16PM 18 THE COURT: IT SAYS, "IN MR. HILL'S SUPPLEMENTAL
02:16PM 19 REPORT HE MAKES THE STATEMENT"--AND MR. HILL WAS A FORMER
02:16PM 20 EMPLOYEE OF THE HOPKINS COUNTY SHERIFF'S OFFICE--"HE MAKES THE
02:16PM 21 STATEMENT THAT DISPATCH ADVISED HIM THAT COMPLAINANT, BEING
02:16PM 22 MR. SMIDDY, SAW THE MALE SUBJECT FORCE THE FEMALE SUBJECT INTO
02:17PM 23 A WHITE TRUCK AND THEN DRIVE OFF. AND WHILE DRIVING OFF, THE
02:17PM 24 FEMALE SUBJECT TRIED TO EXIT THE VEHICLE, AND THE MALE SUBJECT
02:17PM 25 JERKED HER BACK IN." OKAY.

02:17PM 1 MR. ELLIS: YOUR HONOR, THE ARGUMENT WOULD BE, UNDER
02:17PM 2 SCHLUP AND HOUSE, THAT ALL EVIDENCE SHOULD COME IN AND ALL
02:17PM 3 EVIDENCE IS RELEVANT. AND I THINK THAT THIS IS HIGHLY--HIGHLY
02:17PM 4 RELEVANT.

02:17PM 5 MS. MIRANDA: YOUR HONOR, I'M NOT OBJECTING TO THE
02:18PM 6 FACT THAT THIS EVIDENCE COMES IN. I'M SIMPLY OBJECTING TO
02:18PM 7 STIPULATING TO TESTIMONY WHEN WE DON'T KNOW THAT THAT'S WHAT
02:18PM 8 HE WOULD HAVE TESTIFIED TO. NOW, IF YOU HAVE THE SUPPLEMENTAL
02:18PM 9 REPORT--

02:18PM 10 MR. ELLIS: I DO.

02:18PM 11 MS. MIRANDA: OKAY. I DON'T HAVE A COPY OF THAT.
02:18PM 12 BUT IF YOU HAVE THE REPORT, THEN I'M WILLING TO STIPULATE TO
02:18PM 13 THE ADMISSION OF THE REPORT. I JUST DON'T WANT TO STIPULATE TO
02:18PM 14 A DEFENSE ATTORNEY'S RENDITION OF WHAT THAT REPORT SAYS, WHICH
02:18PM 15 IS ESSENTIALLY WHAT WAS GOING ON IN THE RECORD.

02:18PM 16 THE COURT: DO YOU WANT TO OFFER THE REPORT?

02:18PM 17 MR. ELLIS: I DON'T HAVE BUT ONE COPY.

02:18PM 18 THE COURT: ALL RIGHT. IF YOU'LL HANG ON JUST A
02:18PM 19 MINUTE, MR. ELLIS, WE'LL MAKE COPIES.

02:18PM 20 MR. ELLIS: THANK YOU VERY MUCH, YOUR HONOR.

02:19PM 21 [PETITIONER SPEAKING ALOUD, BUT NOT LOUD ENOUGH TO
02:22PM 22 DISCERN WHAT HE IS SAYING]

02:22PM 23 THE COURT: OKAY. THIS WOULD BE PETITIONER'S
02:22PM 24 EXHIBIT 7. IS THAT WHERE WE ARE? ALL RIGHT. WE'LL MARK ONE
02:22PM 25 OF THESE MARCH 12TH, 2000, SUPPLEMENTAL REPORTS FROM--I DON'T

02:22PM 1 KNOW--SOMEBODY COSME. VICTOR COSME.

02:22PM 2 MR. ELLIS: YES. THAT'S A DEPUTY, YOUR HONOR.

02:22PM 3 THE COURT: OKAY. HE MADE THE REPORT, IT'S BASED ON
02:22PM 4 THE STATEMENT OF ALICIA SMIDDY. SO IT'S MS. SMIDDY MAKING
02:22PM 5 THESE STATEMENTS--

02:22PM 6 MR. ELLIS: YOUR HONOR, I THINK WE'RE ON THE WRONG
02:22PM 7 STATEMENT HERE.

02:22PM 8 [PETITIONER SPEAKING ALOUD, BUT NOT LOUD ENOUGH TO
02:22PM 9 DISCERN WHAT HE IS SAYING]

02:22PM 10 MR. ELLIS: YEAH, IT'S THE--

02:22PM 11 THE COURT: WAIT A MINUTE. WE ARE TRYING TO MAKE A
02:23PM 12 RECORD HERE. SO EVERYBODY HAS GOT TO BE AT A MICROPHONE. NOW
02:23PM 13 I'VE GOT MR. ACKER MAKING STATEMENTS.

02:23PM 14 MR. ACKER, YOU NEED TO TALK TO YOUR LAWYER. LET
02:23PM 15 YOUR LAWYER SPEAK FOR YOU, SO THAT EVERYTHING COMES FROM
02:23PM 16 MR. ELLIS.

02:23PM 17 MR. ELLIS, IT'S A TWO-SIDED PAGE, I CAN SEE THAT.
02:23PM 18 SO IGNORE WHAT DEPUTY COSME SAID AND JUST LOOK AT THE SINGLE-
02:23PM 19 SPACED SIDE?

02:23PM 20 MR. ELLIS: THAT IS CORRECT, YOUR HONOR. IT'S THE
02:23PM 21 OTHER SIDE OF IT.

02:23PM 22 THE COURT: ALL RIGHT. WELL, IT DOESN'T TELL ME WHO
02:23PM 23 MADE THIS, BUT, LET'S SEE--

02:23PM 24 MR. ELLIS: WELL, ACTUALLY, IT DOES, YOUR HONOR, IN
02:23PM 25 THE FIRST LINE. "I, DEPUTY CHRIS HILL."

02:23PM 1 THE COURT: OKAY.

02:23PM 2 MR. ELLIS: AND IT'S ON THE HOPKINS COUNTY SHERIFF'S
02:23PM 3 OFFICE STATIONERY.

02:23PM 4 THE COURT: OKAY. SO WHAT YOU WANT IN THE RECORD IS
02:23PM 5 THAT, ACCORDING TO THIS STATEMENT--

02:23PM 6 MR. ELLIS: YES. THAT THE ORIGINAL CALL FROM
02:23PM 7 MR. SMIDDY SAID THAT THE MALE SUBJECT FORCED THE FEMALE SUBJECT
02:24PM 8 INTO THE WHITE TRUCK AND THEN DROVE OFF. AND WHILE DRIVING
02:24PM 9 OFF, FEMALE SUBJECT TRIED TO EXIT THE VEHICLE, AND MALE SUBJECT
02:24PM 10 JERKED HER BACK IN.

02:24PM 11 THE COURT: OKAY. I'VE GOT THAT.

02:24PM 12 MR. ELLIS: AND THAT'S ALL THAT WOULD BE RELEVANT AS
02:24PM 13 TO THAT STATEMENT.

02:24PM 14 [PETITIONER SPEAKING ALOUD, BUT NOT LOUD ENOUGH TO
02:24PM 15 DISCERN WHAT HE IS SAYING]

02:24PM 16 MR. ELLIS: SHH.

02:24PM 17 THE COURT: THIS WILL BE PETITIONER'S EXHIBIT 7. IT
02:25PM 18 IS ADMITTED. OKAY. SO WE KNOW WHAT CHRIS HILL WOULD SAY. ALL
02:25PM 19 RIGHT.

02:25PM 20 MR. ELLIS: YES. SO THAT WOULD COVER MR. HILL, YOUR
02:25PM 21 HONOR.

02:25PM 22 THE COURT: OKAY. WHO IS NEXT?

02:25PM 23 MR. ELLIS: IF I MAY HAVE A MOMENT, YOUR HONOR, I'M
02:25PM 24 NOT SURE THAT I HAVE ANY OTHER WITNESSES.

02:25PM 25 THE COURT: OKAY.

02:26PM 1 MR. ELLIS: YOUR HONOR, I THINK THAT'S ALL OF THE
02:26PM 2 WITNESSES THAT I HAVE HERE. I WOULD LIKE TO MAKE ANOTHER CHECK
02:26PM 3 OUTSIDE TO SEE IF ANYBODY ELSE IS HERE.

02:26PM 4 THE COURT: OKAY. GO AHEAD.

02:27PM 5 MR. ELLIS: YOUR HONOR, I BELIEVE THAT WOULD
02:27PM 6 CONCLUDE OUR WITNESSES TODAY. THERE MAY BE A STIPULATION THAT
02:27PM 7 MAY BE ENTERED INTO REGARDING DR. GLENN LARKIN.

02:27PM 8 I WOULD LIKE TO PUT ON THE RECORD THAT THE LATEST
02:27PM 9 INFORMATION I HAVE FROM HIM WAS THAT HE DID SUFFER A PROBABLE
02:27PM 10 HEART ATTACK TODAY. HE WAS TAKEN TO THE EMERGENCY ROOM. THEY
02:27PM 11 DECIDED TO BRING HIM TO A MORE ADVANCED HOSPITAL, PRESBYTERIAN
02:27PM 12 HOSPITAL IN CHARLOTTE. HE WAS IN THE EMERGENCY ROOM THE LAST
02:27PM 13 I HEARD ABOUT HIM. BUT THEY HAVE SAID--THEY'VE TOLD ME 24 TO
02:27PM 14 48 HOURS AT LEAST, AND IT WAS A PROBABLE HEART ATTACK. I'M
02:28PM 15 RUNNING INTO HIPAA PROBLEMS WITH RELEASING INFORMATION, BUT
02:28PM 16 THAT'S THE MOST THAT I'VE BEEN ABLE TO FIND OUT RIGHT NOW. AND
02:28PM 17 IF POSSIBLE, YOUR HONOR, I THINK PERHAPS WITH A CONFERENCE WITH
02:28PM 18 COUNSEL WE MAY BE ABLE TO STIPULATE TO SOME OF HIS TESTIMONY.

02:28PM 19 THE COURT: OKAY.

02:28PM 20 LET'S SEE, MS. MIRANDA, YOU DON'T HAVE ANY OTHER
02:28PM 21 WITNESSES?

02:28PM 22 MS. MIRANDA: I HAVE ONE VERY, VERY SHORT WITNESS.

02:28PM 23 THE COURT: OH, YOU DO?

02:28PM 24 MS. MIRANDA: WHICH WE ALSO ANTICIPATED CALLING AS
02:28PM 25 REBUTTAL NOT TO JUST MR. SANDS BUT ALSO MR. LARKIN. SO, I

02:28PM 1 MEAN, WE CAN PUT HIS TESTIMONY ON IN ABOUT FIVE MINUTES. IT'S
02:28PM 2 NOT GOING TO MAKE A WHOLE LOT OF SENSE IN CONTEXT UNTIL WE HEAR
02:28PM 3 FROM DR. LARKIN.

02:28PM 4 THE COURT: OKAY. WELL, WE WILL TAKE A RECESS TO
02:28PM 5 SEE IF YOU CAN REACH A STIPULATION ON WHAT DR. LARKIN WOULD
02:28PM 6 SAY IF HE WERE HERE, AND THEN I'LL HEAR FROM YOUR LAST WITNESS.

02:28PM 7 OTHER THAN DR. LARKIN, MR. ELLIS, YOU DON'T HAVE ANY
02:28PM 8 OTHER WITNESSES?

02:28PM 9 MR. ELLIS: NO, I DO NOT.

02:28PM 10 THE COURT: OKAY. LET'S TAKE A RECESS SO YOU CAN
02:29PM 11 VISIT WITH MS. MIRANDA. HOW MUCH TIME DO YOU NEED?

02:29PM 12 MR. ELLIS: FIVE MINUTES SHOULD BE ENOUGH, I WOULD
02:29PM 13 THINK.

02:29PM 14 THE COURT: OKAY. WE'LL TAKE 15 MINUTES. WE'LL
02:29PM 15 RECESS FOR 15 MINUTES. THANK YOU.

02:29PM 16 [RECESS]

02:48PM 17 THE COURT: THANK YOU. PLEASE BE SEATED.

02:49PM 18 MS. MIRANDA MUST BE OUT IN THE HALLWAY.

02:49PM 19 [MS. MIRANDA AND MS. KUYKENDALL ENTERED THE
02:49PM 20 COURTROOM]

02:49PM 21 THE COURT: WERE YOU ABLE TO REACH ANY STIPULATION?

02:49PM 22 MS. MIRANDA: YES, YOUR HONOR.

02:49PM 23 THE COURT: OKAY.

02:49PM 24 MS. MIRANDA: YES, YOUR HONOR, WE WERE.

02:50PM 25 THE COURT: OKAY. AND THAT'S A STIPULATION ON WHAT

02:50PM 1 DR. --I LEFT MY NOTES IN THE OTHER ROOM.

02:50PM 2 MR. ELLIS: LARKIN, YOUR HONOR.

02:50PM 3 THE COURT: WHAT DR. LARKIN WOULD SAY? OKAY. DO
02:50PM 4 YOU WANT TO DICTATE IT, OR WHAT?

02:50PM 5 MS. MIRANDA: I'LL STATE MY UNDERSTANDING OF OUR
02:50PM 6 STIPULATION AND THEN--

02:50PM 7 THE COURT: OKAY. I'LL TELL YOU WHAT. I LEFT MY
02:50PM 8 NOTES IN THE OFFICE. I'M GOING TO GO GET THEM. WHEN I COME
02:50PM 9 BACK IN, YOU DON'T NEED TO STAND UP.

02:52PM 10 JUST KEEP YOUR SEATS.

02:52PM 11 OKAY, MR. ELLIS, WHAT IS YOUR STIPULATION?

02:52PM 12 MR. ELLIS: WELL, ACTUALLY, IT'S THE RESPONDENT'S--

02:52PM 13 MS. MIRANDA: YOUR HONOR, I BELIEVE THAT WE AGREED
02:52PM 14 THAT WE COULD STIPULATE TO THE FACT THAT, IF QUESTIONED,
02:52PM 15 DR. LARKIN WOULD, I SUPPOSE, CONCEDE THAT IT'S POSSIBLE THAT
02:52PM 16 MS. GEORGE WAS RUN OVER.

02:52PM 17 MR. ELLIS: YES, THAT A RUNOVER WAS A POSSIBILITY.

02:52PM 18 THE COURT: OKAY.

02:52PM 19 MR. ELLIS: THE SECOND PART WOULD BE THAT FROM THE
02:52PM 20 MEDICAL EVIDENCE ALONE IT IS IMPOSSIBLE TO SAY WHETHER THERE
02:52PM 21 WAS A PUSHING OR A JUMPING OF THE VICTIM FROM THE VEHICLE.

02:53PM 22 THE COURT: OKAY. I'VE WRITTEN DOWN THOSE TWO
02:53PM 23 STIPULATIONS. THANK YOU.

02:53PM 24 MR. ELLIS: YOUR HONOR, WE DO HAVE ONE MORE
02:53PM 25 STIPULATION TO OFFER. I'LL SUPPLY THE COURT WITH A COPY,

02:53PM 1 IF I MAY.

02:53PM 2 THE COURT: ALL RIGHT. THANK YOU. THIS WILL BE
02:54PM 3 PETITIONER'S EXHIBIT 8, I BELIEVE.

02:54PM 4 MR. ELLIS: YES. AND THIS IS A STATEMENT FROM
02:54PM 5 ALICIA SMIDDY, S-M-I-D-D-Y, TO THE HOPKINS COUNTY SHERIFF'S
02:54PM 6 OFFICE REGARDING THE EVENTS OF MARCH 12, 2000.

02:54PM 7 THE COURT: IS THIS THE STATEMENT THAT DEPUTY COSME
02:54PM 8 TOOK?

02:54PM 9 MR. ELLIS: YES, YOUR HONOR, THIS IS. WOULD YOUR
02:55PM 10 HONOR LIKE ME TO READ IT INTO THE RECORD?

02:55PM 11 THE COURT: IF YOU WOULD, PLEASE.

02:55PM 12 MR. ELLIS: THIS IS A STATEMENT BY ALICIA SMIDDY.
02:55PM 13 AND THE STATEMENT IS: MARQUETTA, M-A-R-Q-U-E-T-T-A, CAME
02:55PM 14 RUNNING OUT OF THEIR HOUSE YELLING FOR US TO CALL THE SHERIFF,
02:55PM 15 THAT HE WAS NOT GOING--THAT HE NOT GOING TO BEAT ME. SHE GOT
02:55PM 16 BEHIND--IT'S A LITTLE CUT OFF HERE--SO HE COULDN'T GET HER--

02:55PM 17 THE COURT: I'LL TELL YOU WHAT. MY COPY IS BETTER,
02:55PM 18 APPARENTLY. SHALL I READ IT?

02:55PM 19 MR. ELLIS: I'D APPRECIATE THAT, YOUR HONOR.

02:55PM 20 THE COURT: FOLLOW ALONG IF I MISSTATE SOMETHING.
02:55PM 21 "MARQUETTA CAME RUNNING OUT OF THEIR HOUSE YELLING FOR US TO
02:55PM 22 CALL THE SHERIFF, THAT HE'S NOT GOING TO BEAT ME. SHE GOT
02:55PM 23 BEHIND ME SO HE COULDN'T GET HER. MY ONE-YEAR-OLD WAS IN THE
02:55PM 24 STROLLER BY ME. HE CAME CHARGING OUT OF THE HOUSE WITH NO
02:56PM 25 SHIRT, WITH AN EVIL, MAD LOOK ON HIS FACE, NEVER SAYING

02:56PM 1 ANYTHING, WALKED BY MY ONE-YEAR-OLD, PICKED MARQUETTA UP OVER
02:56PM 2 HIS SHOULDER. SHE WAS SCREAMING, KICKING, YELLING, 'NO,
02:56PM 3 DANIEL, NO, DANIEL,' TRYING HER BEST TO GET LOOSE. SHE STARTED
02:56PM 4 CRYING. HE SHOVED HER INTO A WHITE UTILITY TRUCK ON THE DRIVER
02:56PM 5 DOOR SIDE. SHE WAS TRYING TO GET OUT. HE HIT HER, SHOVED HER
02:56PM 6 ON IN, HOLDING HER DOWN, SPUN OFF THROUGH THE DITCH. SHE WAS
02:56PM 7 TRYING TO GET OUT. HE WAS SWERVING ALL OVER THE ROAD, TURNED
02:56PM 8 AND WENT TOWARDS MAHONEY. THAT WAS THE LAST WE SAW."

02:56PM 9 THAT'S ALL I HAVE.

02:56PM 10 MR. ELLIS: YES, THAT IS IT, YOUR HONOR.

02:56PM 11 THE COURT: OKAY. PETITIONER'S--

02:56PM 12 YES?

02:56PM 13 MS. MIRANDA: OH, SORRY. GO AHEAD.

02:57PM 14 THE COURT: PETITIONER'S EXHIBIT 8 IS ADMITTED.

02:57PM 15 MS. MIRANDA: AND THEN WE JUST HAD ONE LAST WITNESS.

02:57PM 16 WE WERE GOING TO CALL MR. HURLEY.

02:57PM 17 THE COURT: OKAY.

02:57PM 18 SO, MR. ELLIS, YOU REST?

02:57PM 19 MR. ELLIS: YOUR HONOR, A LITTLE BOOKKEEPING HERE.

02:57PM 20 THE EXHIBITS TO THE WRIT ARE A PART OF THE RECORD FOR THIS
02:57PM 21 HEARING, ARE THEY NOT? I WOULDN'T NEED TO RE-OFFER THEM, I
02:57PM 22 WOULD THINK. FOR INSTANCE, THE AUTOPSY REPORT, DR. LARKIN'S
02:57PM 23 REPORT. I WOULD JUST ASK THAT--WELL, TO SIMPLIFY THINGS, I
02:57PM 24 WOULD ASK THAT ALL EXHIBITS SUBMITTED AS PART OF MY WRIT BE
02:57PM 25 ENTERED AS PART OF THE RECORD OF THIS HEARING.

02:57PM 1 THE COURT: OKAY. I HAVE THREE VOLUMES OF EXHIBITS
02:57PM 2 THAT ARE EXHIBITS TO THE PETITION FOR WRIT OF HABEAS CORPUS,
02:58PM 3 AND THEY INCLUDE--THOSE COVER EXHIBITS 1 THROUGH 32, IS THAT
02:58PM 4 RIGHT?

02:58PM 5 MR. ELLIS: YES, YOUR HONOR, THAT IS CORRECT, THREE
02:58PM 6 VOLUMES OF EXHIBITS, 1 TO 32. JUST SO THAT THEY DON'T NEED TO
02:58PM 7 BE REOFFERED HERE.

02:58PM 8 THE COURT: THEY'RE PART OF THE FILING IN THIS CASE,
02:58PM 9 SO I BELIEVE I CAN RELY ON THOSE IN MAKING A RULING ON YOUR
02:58PM 10 PETITION.

02:58PM 11 MR. ELLIS: THANK YOU, YOUR HONOR.

02:58PM 12 THE COURT: OKAY. AND WITH THAT, YOU REST?

02:58PM 13 MR. ELLIS: YES, WITH THAT, WE REST, YOUR HONOR.

02:58PM 14 THE COURT: ALL RIGHT.

02:58PM 15 MS. MIRANDA, YOU HAVE A WITNESS?

02:58PM 16 MS. MIRANDA: CALL TONEY HURLEY.

02:58PM 17 THE COURT: TONEY?

02:58PM 18 MS. MIRANDA: HURLEY.

02:58PM 19 THE COURT: HURLEY.

02:59PM 20 HOW ARE YOU?

02:59PM 21 THE WITNESS: GOOD, THANK YOU.

02:59PM 22 THE COURT: MS. MIRANDA.

02:59PM 23 DIRECT EXAMINATION OF TONEY HURLEY ON BEHALF OF THE RESPONDENT

02:59PM 24 MS. MIRANDA:

02:59PM 25 Q. CAN YOU STATE YOUR NAME FOR THE RECORD.

02:59PM 1 A. TONEY HURLEY.

02:59PM 2 Q. WHERE ARE YOU CURRENTLY EMPLOYED, MR. HURLEY?

02:59PM 3 A. WITH THE HOPKINS COUNTY SHERIFF'S OFFICE.

02:59PM 4 Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

02:59PM 5 A. BE 20 YEARS THIS MONTH.

02:59PM 6 Q. OKAY. SO THAT ANSWERS MY NEXT QUESTION. BACK IN MARCH
02:59PM 7 OF 2000, YOU WERE WITH THE HOPKINS COUNTY SHERIFF'S OFFICE.
02:59PM 8 CORRECT?

02:59PM 9 A. YES, MA'AM.

02:59PM 10 Q. ALL RIGHT. DID YOU HAVE AN OCCASION TO GET INVOLVED IN
02:59PM 11 THE INVESTIGATION OF MARQUETTA GEORGE'S DEATH?

02:59PM 12 A. YES, MA'AM.

02:59PM 13 Q. WHAT WAS YOUR ROLE THERE?

02:59PM 14 A. I WAS CHIEF INVESTIGATOR OF THE SHERIFF'S OFFICE AT
02:59PM 15 THE TIME, AND I RECEIVED THE CALL, AS MOST OF US DO IN THE
02:59PM 16 CRIMINAL INVESTIGATION DIVISION WHEN WE HAVE A DEATH.

02:59PM 17 Q. OKAY. DURING THE COURSE OF YOUR INVESTIGATION, DID YOU
02:59PM 18 HAVE AN OPPORTUNITY TO OBSERVE THE TRUCK THAT WAS DRIVEN THAT
03:00PM 19 DAY?

03:00PM 20 A. YES, MA'AM, I DID.

03:00PM 21 Q. OKAY. WHAT TYPE OF--WHAT KIND OF TRUCK WAS IT?

03:00PM 22 A. IT WAS AN F350 FORD ONE-TON. IT HAD A UTILITY BED ON
03:00PM 23 IT.

03:00PM 24 Q. ALL RIGHT. DO YOU KNOW THE YEAR?

03:00PM 25 A. 1999.

03:00PM 1 Q. 1999? OKAY. AND DURING THE COURSE OF YOUR
03:00PM 2 INVESTIGATION, DID YOU EVER LEARN WHETHER THERE WAS
03:00PM 3 ANY BLOOD FOUND INSIDE THAT TRUCK?

03:00PM 4 A. YES.

03:00PM 5 Q. OKAY. WAS THERE ANY BLOOD FOUND INSIDE THE TRUCK?

03:00PM 6 A. I BELIEVE THERE WAS A SMALL SPECK OF BLOOD FOUND NEAR
03:00PM 7 THE DRIVER'S SEAT, TOWARDS THE BACK OF THE SEAT.

03:00PM 8 Q. OKAY. AND TO YOUR KNOWLEDGE, THAT WAS ALL THE BLOOD
03:00PM 9 THAT WAS FOUND IN THE TRUCK?

03:00PM 10 A. YES, MA'AM.

03:00PM 11 Q. OKAY.

03:00PM 12 NOW, RECENTLY, DID YOU HAVE AN OPPORTUNITY TO DO AN
03:00PM 13 INVESTIGATION INTO A SIMILAR TRUCK?

03:00PM 14 A. YES, MA'AM.

03:00PM 15 Q. OKAY. CAN YOU TELL US ABOUT THAT.

03:00PM 16 A. IN PREPARATION OF THIS HEARING, ON MONDAY OF THIS WEEK,
03:00PM 17 I LOOKED FOR A 1999 F350 ONE-TON WITH A BENCH SEAT.

03:00PM 18 Q. OKAY.

03:00PM 19 A. AND I FOUND ONE IN SULPHUR SPRINGS THAT I TOOK THE
03:01PM 20 MEASUREMENTS FROM.

03:01PM 21 Q. OKAY. WAS IT FROM THE SAME YEAR?

03:01PM 22 A. YES, MA'AM, IT WAS A 1999.

03:01PM 23 Q. SAME YEAR, SAME MAKE, SAME MODEL?

03:01PM 24 A. YES, MA'AM.

03:01PM 25 Q. OKAY. AND WHAT DID YOU DO?

03:01PM 1 A. I TOOK VARIOUS MEASUREMENTS FROM THE INSIDE OF THE
03:01PM 2 VEHICLE AND SAT IN THE VEHICLE BEHIND THE STEERING-WHEEL AREA.

03:01PM 3 Q. OKAY. AND DID YOU ATTEMPT, FROM SITTING IN THE
03:01PM 4 DRIVER'S SIDE, TO SEE WHETHER YOU COULD REACH OVER TO THE
03:01PM 5 PASSENGER-SIDE DOOR?

03:01PM 6 A. YES, MA'AM.

03:01PM 7 Q. OKAY. CAN YOU TELL US--YOU SAID YOU TOOK VARIOUS
03:01PM 8 MEASUREMENTS. HOW FAR EXACTLY IS IT FROM DOOR-TO-DOOR?

03:01PM 9 A. FROM WINDOW-TO-WINDOW, IT IS 6 FOOT AND 1/2 INCHES.

03:01PM 10 Q. OKAY.

03:01PM 11 A. FROM DOOR HANDLE OR THE DOOR OPENING MECHANISM, DOOR
03:01PM 12 LATCH TO DOOR LATCH, IT'S 67 INCHES.

03:01PM 13 Q. OKAY. SO A LITTLE BIT SHORT OF 6 FEET IF MY MATH IS
03:01PM 14 CORRECT.

03:01PM 15 A. YES, MA'AM. 72 INCHES BEING 6 FEET.

03:02PM 16 Q. OKAY. NOW, DID YOU MEASURE FROM THE CENTER OF THE
03:02PM 17 STEERING WHEEL TO THE DOOR HANDLE?

03:02PM 18 A. YES, MA'AM. FROM THE CENTER OF THE STEERING WHEEL WITH
03:02PM 19 THE WHEELS TURNED STRAIGHT IS 52 INCHES TO THE PASSENGER-SIDE
03:02PM 20 DOOR LATCH.

03:02PM 21 Q. OKAY. SO A LITTLE OVER 4 FEET?

03:02PM 22 A. YES, MA'AM.

03:02PM 23 Q. NOW, HOW TALL ARE YOU?

03:02PM 24 A. 5 FOOT, 10 INCHES.

03:02PM 25 Q. OKAY. DO YOU KNOW HOW TALL MR. ACKER IS?

03:02PM 1 A. BACK IN 2000, HE WAS 6 FOOT.

03:02PM 2 Q. OKAY. SO YOU ARE SHORTER THAN MR. ACKER. CORRECT?

03:02PM 3 A. YES, MA'AM.

03:02PM 4 Q. NOW, BEING SHORTER THAN MR. ACKER, WERE YOU ABLE TO,
03:02PM 5 SITTING IN THE DRIVER'S SIDE, LEAN OVER, REACH OVER, AND OPEN
03:02PM 6 THE PASSENGER-SIDE DOOR?

03:02PM 7 A. YES, MA'AM.

03:02PM 8 MS. MIRANDA: THANK YOU.

03:02PM 9 I'LL PASS THE WITNESS.

03:02PM 10 CROSS-EXAMINATION OF TONEY HURLEY ON BEHALF OF THE PETITIONER

03:03PM 11 MR. ELLIS:

03:03PM 12 Q. IS IT OFFICER HURLEY OR--

03:03PM 13 A. TONEY HURLEY.

03:03PM 14 Q. YOU ARE STILL AT THE HOPKINS COUNTY SHERIFF'S OFFICE?

03:03PM 15 A. YES, SIR.

03:03PM 16 Q. NOW, I TAKE IT YOUR TESTS ON THIS TRUCK--WERE THEY DONE
03:03PM 17 WHILE YOU WERE DRIVING THE TRUCK?

03:03PM 18 A. NO, SIR.

03:03PM 19 Q. IT WAS STATIONERY, IN OTHER WORDS?

03:03PM 20 A. YES, SIR.

03:03PM 21 Q. WAS THERE ANYBODY IN THE TRUCK WHEN YOU DID THE TEST?

03:03PM 22 A. NO, SIR; I WAS BY MYSELF.

03:03PM 23 Q. AND NOBODY WAS TRYING TO RESIST YOUR HANDS OPENING THE
03:03PM 24 DOOR, IS THAT CORRECT?

03:03PM 25 A. NO, SIR.

03:03PM 1 Q. WERE THERE ANY LIGHT BULBS OR OTHER THINGS ON THE SEAT
03:03PM 2 THAT YOU HAD TO GO AROUND TO OPEN THE DOOR?

03:03PM 3 A. NO, SIR.

03:03PM 4 Q. AND DID YOU KNOW MARKIE GEORGE?

03:03PM 5 A. YES, SIR.

03:03PM 6 Q. AND SHE WAS FAIRLY YOUNG AT THE TIME OF HER DEATH, IS
03:03PM 7 THAT NOT CORRECT?

03:03PM 8 A. I DON'T REMEMBER THE EXACT AGE, BUT I THINK EARLY 30S
03:04PM 9 MAYBE.

03:04PM 10 Q. SHE WAS IN PRETTY GOOD HEALTH, WASN'T SHE?

03:04PM 11 A. IN WHAT ASPECT?

03:04PM 12 Q. WELL, SHE WASN'T PHYSICALLY DISABLED OR HANDICAPPED,
03:04PM 13 WAS SHE?

03:04PM 14 A. SHE HAD A BULLET WOUND TO HER CHEST, BUT I DON'T THINK
03:04PM 15 THAT HANDICAPPED HER ANY WAY.

03:04PM 16 Q. INCIDENTALLY, ARE YOU AWARE OF A PRIOR INCIDENT WHEN
03:04PM 17 SHE TRIED TO JUMP OUT OF A POLICE CAR?

03:04PM 18 A. TRIED TO JUMP OUT OF A POLICE CAR?

03:04PM 19 Q. YES, A PRIOR INCIDENT.

03:04PM 20 A. I'M NOT AWARE OF THAT, NO, SIR.

03:04PM 21 Q. BUT YOU ARE AWARE OF THE PRIOR INCIDENT THAT SHE TRIED
03:04PM 22 TO JUMP TWO WEEKS PRIOR TO HER DEATH? YOU ARE AWARE OF THAT
03:04PM 23 INCIDENT?

03:04PM 24 A. I HEARD ABOUT THAT INCIDENT, YES, SIR.

03:04PM 25 Q. NOW, DID THE TRUCK THAT YOU DID THESE TESTS ON, DID IT

03:04PM 1 HAVE UTILITY BEDS ON THE SIDE THAT EXTENDED PAST THE CAB?

03:04PM 2 A. NO, SIR. IT WAS A REGULAR DUALY BED, AS IT'S REFERRED
03:04PM 3 TO, A DUAL-WHEEL BED.

03:04PM 4 Q. SO IT DIDN'T HAVE THESE UTILITY BEDS ON THE SIDE, IS
03:05PM 5 THAT CORRECT?

03:05PM 6 A. NO, IT DIDN'T HAVE A WORK BODY ON IT, NO, SIR.

03:05PM 7 Q. WOULD YOU SAY THAT THIS TRUCK THAT YOU TESTED WOULD BE
03:05PM 8 WIDER THAN AN ORDINARY SEDAN, SAY, A CADILLAC OR SOMETHING LIKE
03:05PM 9 THAT?

03:05PM 10 A. THE TRUCK THAT I TOOK THE MEASUREMENTS OF THE CAB IS
03:05PM 11 THE SAME DIMENSIONS OF THE TRUCK THAT MR. ACKER WAS DRIVING ON
03:05PM 12 THAT DAY. THE CABS ARE THE SAME.

03:05PM 13 Q. RIGHT. BUT HOW--THAT WASN'T QUITE THE QUESTION. THE
03:05PM 14 QUESTION WAS: HOW WOULD THE INTERIOR OF THIS TRUCK COMPARE TO,
03:05PM 15 SAY, REGULAR-SIZE SEDANS, FULL-SIZE SEDANS, SAY, A CADILLAC OR
03:05PM 16 A BUICK OR SOMETHING LIKE THAT.

03:05PM 17 A. WOULD IT BE DIFFERENT?

03:05PM 18 Q. WOULD IT BE WIDER?

03:05PM 19 A. I'VE REALLY NEVER HAD A REASON TO MEASURE A SEDAN,
03:05PM 20 SO I CAN'T REALLY ANSWER THAT. I'M SORRY.

03:05PM 21 Q. OKAY. YOU NEVER MEASURED A SEDAN IN THE COURSE OF YOUR
03:05PM 22 POLICE WORK?

03:05PM 23 A. NO, SIR.

03:05PM 24 Q. OKAY. NOW, BASICALLY--SO WHEN YOU CONDUCTED THE TEST,
03:06PM 25 THE CAR WAS NOT GOING ANYWHERE, IS THAT CORRECT?

03:06PM 1 A. NO, SIR.

03:06PM 2 Q. OKAY. AND YOU NEVER TRIED TO DRIVE AT 20, 30, 40 MILES
03:06PM 3 AN HOUR WHILE TRYING TO DO THIS EXPERIMENT WITH THE DOOR, IS
03:06PM 4 THAT CORRECT?

03:06PM 5 A. NO, SIR. I WAS JUST OBTAINING SOME MEASUREMENTS.

03:06PM 6 MR. ELLIS: MAY I APPROACH, YOUR HONOR?

03:06PM 7 THE COURT: YES.

03:06PM 8 MR. ELLIS:

03:07PM 9 Q. OFFICER HURLEY, I'VE SHOWN YOU A TWO-PAGE REPORT. IS
03:07PM 10 THAT YOUR SIGNATURE ON PAGE 2?

03:07PM 11 A. YES, SIR.

03:07PM 12 Q. AND DID YOU HAVE OCCASION TO TALK TO MR. ACKER AFTER HE
03:07PM 13 WAS ARRESTED?

03:07PM 14 A. YES, SIR.

03:07PM 15 Q. AND AT ONE POINT HE GOT--DID HE GET SORT OF ANGRY WHEN
03:07PM 16 YOU HAD TOLD HIM SOME THINGS? DO YOU REMEMBER THAT?

03:07PM 17 A. YES, SIR.

03:07PM 18 Q. AND DO YOU REMEMBER TELLING HIM ABOUT WHAT THE MEDICAL
03:07PM 19 EXAMINER HAD SAID ABOUT STRANGULATION?

03:07PM 20 A. YES, SIR.

03:07PM 21 Q. AND WHAT WAS HIS REACTION TO THAT?

03:07PM 22 A. I BELIEVE--AND I MAY HAVE THE WORDING--YOU KNOW, IT'S
03:07PM 23 BEEN 11 YEARS AGO, BUT I BELIEVE HE STATED THAT THE MEDICAL
03:08PM 24 EXAMINER IS A LIAR.

03:08PM 25 Q. THAT SHE WAS LYING ABOUT THE STRANGULATION, IS THAT

03:08PM 1 CORRECT?

03:08PM 2 A. YES.

03:08PM 3 MR. ELLIS: YOUR HONOR, I WOULD OFFER THAT AS
03:08PM 4 PETITIONER'S--

03:08PM 5 THE COURT: I CAN'T HEAR YOU. WE'VE GOT TO MAKE A
03:08PM 6 RECORD.

03:08PM 7 MR. ELLIS: EXCUSE ME, YOUR HONOR. WE WOULD OFFER
03:08PM 8 THAT STATEMENT AS PETITIONER'S EXHIBIT 9. I'VE LOST TRACK
03:08PM 9 AGAIN.

03:08PM 10 THE COURT: OKAY.

03:08PM 11 MR. ELLIS: THE COPY I GAVE COUNSEL AND MR. HURLEY
03:08PM 12 IS NOT MARKED UP, SO PERHAPS ONE OF THEM COULD COME INTO
03:08PM 13 EVIDENCE.

03:08PM 14 MS. MIRANDA: NO OBJECTION, YOUR HONOR.

03:08PM 15 THE COURT: OKAY. PETITIONER'S EXHIBIT 9 IS
03:08PM 16 ADMITTED.

03:08PM 17 MS. MIRANDA: I'M GOING TO GET HIS COPY OF THE
03:08PM 18 STATEMENT.

03:08PM 19 THE COURT: ALL RIGHT.

03:08PM 20 THE WITNESS: THIS IS MINE.

03:08PM 21 MR. ELLIS: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

03:09PM 22 THE COURT: ALL RIGHT.

03:09PM 23 ANY OTHER FOLLOW-UP QUESTIONS, MS. MIRANDA?

03:09PM 24 MS. MIRANDA: JUST ONE, YOUR HONOR.

03:09PM 25 THE COURT: OKAY.

03:09PM 1 REDIRECT EXAMINATION OF TONEY HURLEY ON BEHALF OF THE RESPONDENT

03:09PM 2 MS. MIRANDA:

03:09PM 3 Q. MR. HURLEY, DURING THAT SAME CONVERSATION WITH
03:09PM 4 MR. ACKER, DID HE INDICATE TO YOU IN ANY WAY THAT HE WAS
03:09PM 5 RESPONSIBLE FOR MS. GEORGE'S DEATH?

03:09PM 6 A. YES. I BELIEVE IT WAS AS I WAS WALKING HIM BACK TO
03:09PM 7 HIS CELL AFTER THE SECOND INTERVIEW. I REMEMBER HIM TELLING
03:09PM 8 ME THAT HE REALLY NEEDED TO GO BACK AND TELL ME SOME MORE ABOUT
03:09PM 9 THE REST OF THE TRUTH, THAT HE HADN'T BEEN TRUTHFUL WITH ME AND
03:09PM 10 HE WANTED TO TELL ME SOME MORE THINGS.

03:09PM 11 Q. OKAY.

03:09PM 12 A. AND SO WE WENT BACK AND STARTED TO AUDIO- AND VIDEOTAPE
03:09PM 13 OVER AGAIN.

03:09PM 14 Q. OKAY. AND WHAT DID HE TELL YOU?

03:09PM 15 A. I WOULD HAVE TO READ.

03:09PM 16 Q. DID HE INDICATE TO YOU THAT HE WAS THE CAUSE OF
03:09PM 17 MS. GEORGE'S DEATH?

03:10PM 18 A. YES. "ACKER STATED THAT GEORGE WAS TRYING TO GET OUT
03:10PM 19 OF THE TRUCK WHILE HE WAS DRIVING. ACKER STATED THAT HE WAS
03:10PM 20 PULLING GEORGE'S HAIR TO HOLD HER IN THE TRUCK. ACKER STATED
03:10PM 21 THAT HE ALSO HIT GEORGE IN THE NOSE AND MOUTH. ACKER TOLD
03:10PM 22 HURLEY AND CHESTER THAT HE KNEW THAT HE WAS THE CAUSE OF
03:10PM 23 MARKIE'S DEATH BECAUSE HE PLACED HER IN THE TRUCK. AND THEN
03:10PM 24 ACKER CONTINUED TO STATE THAT GEORGE JUMPED OUT OF THE TRUCK."

03:10PM 25 MS. MIRANDA: THANK YOU.

03:10PM 1 NO FURTHER QUESTIONS.

03:10PM 2 THE COURT: ANY FOLLOW-UP QUESTIONS?

03:10PM 3 DO YOU HAVE ANY MORE QUESTIONS, MR. ELLIS?

03:10PM 4 MR. ELLIS: NO, YOUR HONOR.

03:10PM 5 THE COURT: OKAY.

03:10PM 6 LET'S SEE. WERE YOU READING THAT FROM THE SAME

03:10PM 7 PETITIONER'S EXHIBIT 9?

03:10PM 8 THE WITNESS: YES, SIR.

03:10PM 9 THE COURT: OKAY.

03:10PM 10 THE WITNESS: IT WAS DOWN THERE ON THE SECOND PAGE,

03:10PM 11 ABOUT RIGHT ALONG IN THERE.

03:10PM 12 THE COURT: OKAY. LET ME LOOK AT THAT JUST FOR A

03:10PM 13 MOMENT.

03:10PM 14 THE WITNESS: ABOUT THREE-QUARTERS DOWN ON THAT

03:11PM 15 PARAGRAPH.

03:11PM 16 THE COURT: OKAY.

03:13PM 17 MR. ELLIS, DO YOU HAVE MORE QUESTIONS FOR THE

03:13PM 18 WITNESS?

03:13PM 19 MR. ELLIS: NO, I DON'T, YOUR HONOR.

03:13PM 20 THE COURT: IS THIS WITNESS EXCUSED THEN?

03:13PM 21 MS. MIRANDA: YES, YOUR HONOR.

03:13PM 22 THE COURT: ALL RIGHT.

03:13PM 23 DEPUTY HURLEY, THANK YOU VERY MUCH.

03:13PM 24 THE WITNESS: THANK YOU.

03:13PM 25 THE COURT: DOES THE RESPONDENT REST?

03:13PM 1 MS. MIRANDA: YES, YOUR HONOR, WE DO.

03:13PM 2 THE COURT: OKAY.

03:13PM 3 DO YOU WANT TO BE HEARD? OR DO YOU WANT TO SUBMIT
03:13PM 4 YOUR ARGUMENTS IN WRITING?

03:13PM 5 MR. ELLIS: YOUR HONOR, I THINK WE'VE BOTH INDICATED
03:14PM 6 THAT THERE ARE ENOUGH LEGAL ARGUMENTS HERE THAT I BELIEVE THE
03:14PM 7 POST-HEARING BRIEF WOULD BE VERY HELPFUL. I THINK COUNSEL
03:14PM 8 FOR THE RESPONDENT DOES TOO. I THINK THAT, YES, WE WOULD BE
03:14PM 9 REQUESTING A POST-HEARING BRIEF WHEN THE TRANSCRIPT OF THE
03:14PM 10 HEARING IS AVAILABLE.

03:14PM 11 THE COURT: OKAY. WELL, THEN, SHALL WE SET ANY
03:14PM 12 TIMELINE FOR BRIEFING IN THIS CASE?

03:14PM 13 MS. MIRANDA: MY ONLY REQUEST--I DON'T KNOW HOW
03:14PM 14 SOON WE CAN GET THE TRANSCRIPT, YOUR HONOR, BUT I LEAVE THE
03:14PM 15 ATTORNEY GENERAL'S OFFICE IN A MONTH OR TWO, SO I WOULD REQUEST
03:14PM 16 TO BE ABLE TO BRIEF THIS BEFORE I DO THAT.

03:14PM 17 THE COURT: YOU WOULD REQUEST TO BE ABLE TO DO WHAT?

03:14PM 18 MS. MIRANDA: BRIEF IT BEFORE I LEAVE. AUGUST 19TH
03:14PM 19 IS MY LAST DAY.

03:14PM 20 THE COURT: OKAY. LET'S SEE. ALL RIGHT. TODAY IS
03:14PM 21 JUNE 16TH. I COULD JUST ASK MR. KELLEY IF HE HAS ANY IDEA HOW
03:14PM 22 SOON HE CAN GET THE TRANSCRIPT TO COUNSEL. HE CAN DO IT THIS
03:15PM 23 WEEKEND--

03:15PM 24 MS. MIRANDA: OH, WOW.

03:15PM 25 THE COURT: --IF THAT WOULD HELP YOU. SO LET'S

03:15PM 1 ASSUME, THEN, THAT YOU HAVE THE TRANSCRIPT NEXT WEEK. HOW
03:15PM 2 MANY WEEKS DO YOU NEED TO WORK ON YOUR POST-HEARING BRIEFING?

03:15PM 3 MR. ELLIS: 30 DAYS SHOULD DO IT, YOUR HONOR.

03:15PM 4 MS. MIRANDA: 30 DAYS. I COULD DO TWO WEEKS, 30
03:15PM 5 DAYS, WHICHEVER.

03:15PM 6 THE COURT: OKAY. LET'S SEE.

03:15PM 7 MS. MIRANDA: BUT THEN, ADMITTEDLY, MY SCHEDULE IS
03:15PM 8 PROBABLY LIGHTER THAN COUNSEL'S, BECAUSE THEY'RE NOT GIVING
03:15PM 9 ME ANYTHING NEW.

03:15PM 10 THE COURT: OKAY.

03:15PM 11 MR. ELLIS, COULD YOU HAVE YOUR BRIEFING TO ME, THEN
03:15PM 12 BY, LET'S SEE, JULY 15TH? THAT'S A FRIDAY.

03:16PM 13 MR. ELLIS: YES, THAT SHOULD BE DOABLE, YOUR HONOR.

03:16PM 14 THE COURT: OKAY. DO YOU WANT TO HAVE THE SAME
03:16PM 15 DEADLINE FOR BOTH BRIEFS?

03:16PM 16 MS. MIRANDA: I THINK THAT'S FAIR, YOUR HONOR.

03:16PM 17 THE COURT: OKAY. ALL RIGHT. THEN I'LL EXPECT YOUR
03:16PM 18 POST-HEARING BRIEFS BY JULY 15TH. LET ME ASK YOU TO INCLUDE IN
03:16PM 19 YOUR BRIEFING A QUESTION THAT I HAVE. THE SUPREME COURT SAID,
03:16PM 20 IN HOUSE VERSUS BELL, THAT THE HABEAS COURT--MEANING THIS
03:16PM 21 COURT--MUST CONSIDER ALL THE EVIDENCE, OLD AND NEW--SO THAT
03:17PM 22 WOULD BE THE EVIDENCE I'VE HEARD TODAY AS WELL AS THE EVIDENCE
03:17PM 23 PRESENTED AT TRIAL--BOTH INCRIMINATING AND EXCULPATORY, WITHOUT
03:17PM 24 REGARD TO WHETHER IT WOULD BE ADMISSIBLE UNDER THE RULES OF
03:17PM 25 EVIDENCE, AND, BASED ON THIS TOTAL RECORD, MAKE A PROBABILISTIC

03:17PM 1 DETERMINATION ABOUT WHAT REASONABLE, PROPERLY INSTRUCTED JURORS
03:17PM 2 WOULD DO.

03:17PM 3 NOW, WE KNOW WHAT THE INSTRUCTIONS WERE AT THE
03:17PM 4 TRIAL IN THE STATE COURT. I DON'T KNOW IF THERE'S REALLY
03:17PM 5 ANY LIMITATION ON THAT. BUT, NEVERTHELESS, WE KNOW WHAT THOSE
03:17PM 6 INSTRUCTIONS WERE. THE WAY THAT PARAGRAPH IN HOUSE VERSUS BELL
03:17PM 7 IS WORDED, IT APPEARS THAT THE COURT COULD GO BEYOND THAT AND
03:17PM 8 SIMPLY LOOK AT WHAT HYPOTHETICAL PROPER INSTRUCTIONS WOULD
03:17PM 9 INCLUDE. AND THEN I AM TO ASSESS THE LIKELY IMPACT OF THE
03:18PM 10 EVIDENCE ON REASONABLE JURORS.

03:18PM 11 SO, ASSUMING THE ACTUAL-INNOCENCE ISSUE IS NOT
03:18PM 12 LIMITED TO THE EVIDENCE USED AT TRIAL, WHICH APPARENTLY IT
03:18PM 13 IS NOT, MY QUESTION FOR YOU IS WHETHER IT IS LIMITED IN TERMS
03:18PM 14 OF THE THEORY ADVANCED BY THE PROSECUTION AT TRIAL. I THINK
03:18PM 15 MS. MIRANDA HAS SAID NO, IT'S NOT. BUT I WOULD LIKE FOR YOU
03:18PM 16 TO BRIEF THAT, BECAUSE YOU SEEM TO ARGUE, MR. ELLIS, THAT THERE
03:18PM 17 MAY BE SOME CONSTRAINT THERE.

03:18PM 18 MR. ELLIS: YES, YOUR HONOR, I THINK THERE MAY BE.

03:18PM 19 THE COURT: OKAY.

03:18PM 20 MR. ELLIS: I'M SAYING THAT THIS IS A HOLISTIC
03:18PM 21 JUDGMENT WHEREBY MR.--WE LOOK TO VARIOUS COMPONENTS OF THE
03:18PM 22 TRIAL. SOME OF THE COMPONENTS OF THE TRIAL MIGHT BE THE GRAND
03:18PM 23 JURY INDICTMENT, IT MIGHT BE THE OPENING STATEMENTS, IT MIGHT
03:18PM 24 BE THE ARGUMENTS, THE CLOSING STATEMENTS THAT WERE GIVEN TO
03:19PM 25 THE JURY AT THE TIME OF THE--BEFORE THEY WENT TO DELIBERATE.

03:19PM 1 WE'RE NOT LIMITED TO SIMPLY THE QUESTION OF WHETHER
03:19PM 2 THESE JURORS COULD HAVE, UNDER ONE OF THREE THEORIES, CONVICTED
03:19PM 3 MR. ACKER. THIS IS A HOLISTIC VIEWPOINT THAT I THINK SCHLUP
03:19PM 4 AND HOUSE BRING FORWARD THAT THE COURT HAS TO LOOK AT THE TRIAL
03:19PM 5 AS A TOTALITY. IN THAT SENSE, WE'RE SAYING LOOK AT EVERYTHING.
03:19PM 6 AND, IN FACT, I THINK, UNDER THIS COURT'S JUDGMENT, THE JUDGE
03:19PM 7 COULD EVEN--THIS COURT COULD EVEN LOOK AT THE DECISION ON
03:19PM 8 APPEAL AND SEE WHETHER THAT APPEAL MAKES SENSE IN LIGHT OF
03:19PM 9 THE STATE'S CONCESSION, BASED, AS IT WAS, ON THE THEORY DEATH
03:19PM 10 BY STRANGULATION AND THE STATE HABEAS. WE HAVE FINDINGS AND
03:19PM 11 CONCLUSIONS OF LAW. SO WHAT I'M SAYING IS THAT THIS IS A
03:19PM 12 HOLISTIC--A BROAD VIEWPOINT OF WHETHER PETITIONER WAS DENIED
03:20PM 13 A FAIR TRIAL. AND AS HOUSE SAYS, THE STANDARD IS WHETHER
03:20PM 14 REASONABLE JURORS WOULD HAVE HAD REASONABLE DOUBT. AND THAT,
03:20PM 15 OF NECESSITY, IS A HOLISTIC--

03:20PM 16 THE COURT: AND YOU ARE USING THE WORD "HOLISTIC"
03:20PM 17 IN TERMS OF LOOKING AT BOTH THE EVIDENCE THAT WAS PRESENTED
03:20PM 18 AT TRIAL AND THE EVIDENCE YOU'VE PRESENTED HERE TODAY?

03:20PM 19 MR. ELLIS: ABSOLUTELY.

03:20PM 20 THE COURT: YEAH, I AGREE.

03:20PM 21 MR. ELLIS: WE ARE INCLUDING EVERYTHING.

03:20PM 22 THE COURT: YES, I AGREE.

03:20PM 23 MR. ELLIS: WHETHER IT'S FROM THE INITIAL INDICTMENT
03:20PM 24 TO THE AUTOPSY REPORT, TO THE EVIDENCE PRESENTED AT TRIAL, THE
03:20PM 25 ARGUMENTS PRESENTED AT TRIAL, THE OPENING STATEMENTS AT TRIAL,

03:20PM 1 THE CHARGE TO THE JURY, CERTAINLY. BUT IT'S NOT LIMITED IN
03:20PM 2 ANY WAY. IT'S A BROAD-BASED JUDGMENT OF WHETHER THIS TRIAL
03:20PM 3 WAS FAIR.

03:20PM 4 THE COURT: WELL, I DON'T THINK THE TEST WAS WHETHER
03:20PM 5 THE TRIAL WAS FAIR.

03:20PM 6 MR. ELLIS: NO.

03:20PM 7 THE COURT: IT'S DIFFERENT. WE'VE GONE OVER IT
03:21PM 8 HERE. BUT, NEVERTHELESS, I WOULD JUST LIKE TO KNOW WHAT YOU
03:21PM 9 FIND ON THE QUESTION OF WHETHER THERE IS SOME LIMITATION ON
03:21PM 10 THE HABEAS COURT IN LOOKING AT THIS CASE THROUGH THE LENS OF
03:21PM 11 THE THEORY ADVANCED BY THE PROSECUTION AT TRIAL.

03:21PM 12 MR. ELLIS: I'M SORRY. THE QUESTION WAS WHETHER
03:21PM 13 THIS COURT IS LIMITED TO WHAT WAS PRESENTED AT TRIAL?

03:21PM 14 THE COURT: WELL, TO THE THEORY THAT WAS ADVANCED
03:21PM 15 AT TRIAL. I MEAN, I LOOK AT THE EVIDENCE PRESENTED AT TRIAL
03:21PM 16 AS WELL AS THE EVIDENCE PRESENTED TODAY. BUT AM I LIMITED TO
03:21PM 17 THE THEORY THAT WAS ADVANCED BY THE PROSECUTION AT TRIAL?

03:22PM 18 LET ME HAVE YOU TAKE A LOOK, FOR EXAMPLE--WHEN YOU
03:22PM 19 DO YOUR BRIEFING, TAKE A LOOK AT WHITESIDE VERSUS STATE. AND
03:22PM 20 I'LL GIVE YOU A CITE. IT'S 29 S.W.2D 399, A COURT OF CRIMINAL
03:22PM 21 APPEALS CASE IN 1930. APPARENTLY IT'S STILL A GOOD CASE.
03:22PM 22 IN THAT CASE, AND YOU CAN READ THE CASE, BUT IN THAT CASE
03:22PM 23 THE COURT OF CRIMINAL APPEALS SAID--IT WAS A HOMICIDE CASE--
03:23PM 24 "HOMICIDE IS THE DESTRUCTION OF THE LIFE OF ONE HUMAN BEING BY
03:23PM 25 THE ACT, AGENCY, PROCUREMENT OR CULPABLE OMISSION OF ANOTHER."

03:23PM 1 AND THE COURT OF CRIMINAL APPEALS WAS LOOKING AT STATUTES THERE
03:23PM 2 AND FOCUSING ON A STATUTE THAT SAID, "IF WORDS BE USED WHICH
03:23PM 3 ARE REASONABLY CALCULATED TO PRODUCE AND DO PRODUCE AN ACT
03:23PM 4 WHICH IS THE IMMEDIATE CAUSE OF DEATH, IT IS HOMICIDE.
03:23PM 5 DEFENDANT'S ACT OR OMISSION NEED NOT BE THE IMMEDIATE CAUSE OF
03:23PM 6 DEATH. HE IS RESPONSIBLE IF THE DIRECT CAUSE RESULTS NATURALLY
03:23PM 7 FROM HIS CONDUCT. A PERSON WHO, BY ACTUAL ASSAULT OR THREAT
03:23PM 8 OF VIOLENCE, CAUSES ANOTHER, ACTING UPON WELL-GROUNDED OR
03:24PM 9 REASONABLE FEAR OR APPREHENSION, TO DO AN ACT RESULTING IN
03:24PM 10 PHYSICAL OR CORPORAL INJURY CAUSING HIS DEATH, IS RESPONSIBLE
03:24PM 11 FOR THE HOMICIDE." SO TAKE A LOOK AT THE WHITESIDE CASE.

03:24PM 12 IS THERE ANYTHING FURTHER, MR. ELLIS?

03:24PM 13 MR. ELLIS: NOTHING FURTHER, YOUR HONOR.

03:24PM 14 THE COURT: ALL RIGHT.

03:24PM 15 MS. MIRANDA?

03:24PM 16 MS. MIRANDA: ACTUALLY, WE'VE BEEN ASKED BY THE
03:24PM 17 DEPUTIES WHETHER IT'S OKAY TO TAKE MR. ACKER BACK TO POLUNSKY
03:24PM 18 THIS EVENING.

03:24PM 19 THE COURT: OKAY. I HAVE AN AMENDED WRIT OF HABEAS
03:24PM 20 CORPUS AD TESTIFICANDUM. IF YOU WILL GIVE ME JUST A MINUTE,
03:24PM 21 I'LL SIGN IT.

03:28PM 22 OKAY, I'VE SIGNED AN AMENDED WRIT OF HABEAS CORPUS
03:28PM 23 AD TESTIFICANDUM ON MR. ACKER, REMANDING HIM BACK FROM THE
03:28PM 24 U.S. MARSHAL TO THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE.

03:28PM 25 MR. ELLIS: YOUR HONOR, BRIEFLY, I WOULD LIKE

03:28PM 1 TO THANK THE COURT FOR PROVIDING THIS OPPORTUNITY FOR AN
03:28PM 2 EVIDENTIARY HEARING FOR MR. ACKER.

03:28PM 3 THE COURT: OH, YOU ARE VERY WELCOME. OKAY. IF
03:28PM 4 THERE'S NOTHING FURTHER, WE'LL RECESS ON THIS CASE. I'LL
03:28PM 5 EXPECT YOUR BRIEFING BY JULY 15TH.

03:29PM 6 THANK YOU. YOU ARE EXCUSED.

7

8

9

10 COURT REPORTER'S CERTIFICATE

11

12 I CERTIFY THAT PAGES 1 THROUGH 162 CONTAIN A CORRECT
13 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

14 JUNE 20, 2011.

15



17

JERRY KELLEY, CRR

18

OFFICIAL COURT REPORTER

19

U.S. COURTHOUSE

20

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21

PLANO, TEXAS 75024

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